



May 13, 2019

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: Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for approval of its acquisition of wastewater system assets of Exeter Township; Docket No. A-2018-3004933

PENNSYLVANIA-AMERICAN WATER COMPANY'S PREHEARING MEMORANDUM

Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find Pennsylvania-American Water Company's 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: Jonathan P. Nase

Counsel for *Pennsylvania-American Water Company*

JPN/kmg
Enclosures

cc: Hon. Andrew M. Calvelli
Per Certificate of Service
Susan Simms Marsh, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE
ANDREW M. CALVELLI**

Application of Pennsylvania-American Water Company :
under Sections 507, 1102, and 1329 of the Public Utility :
Code for approval of its acquisition of wastewater system : Docket No. A-2018-3004933
assets of Exeter Township :

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

AND NOW COMES Pennsylvania-American Water Company (“PAWC”), by and through its counsel, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order of the Honorable Administrative Law Judge Andrew M. Calvelli (the “Administrative Law Judge” or “ALJ”), dated April 22, 2019, to file this Prehearing Conference Memorandum in the above-captioned matter. In support thereof, PAWC states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

PAWC and Exeter entered into an agreement by which PAWC will purchase the wastewater system (the “System”) presently owned by Exeter (the “Transaction”). On September 25, 2018, PAWC filed the instant application asking the Commission to approve the Transaction pursuant to 66 Pa. C.S. §§ 1102 and 1329 (the “Section 1329 Application Proceeding”). By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the Section 1329

Application was not accepted for filing purposes because, in the opinion of Commission staff, the Application was incomplete.

On December 5, 2018, PAWC filed an Amended Section 1329 Application with the Commission. On December 19, 2018, the Commission notified PAWC that the Section 1329 Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not accept the Section 1329 Application until PAWC complied with certain customer notice requirements.

On December 14, 2018, the Office of Consumer Advocate (“OCA”) filed a Petition to Reject or Hold in Abeyance Acceptance of the Application (“OCA’s Petition to Reject or Hold in Abeyance”). PAWC filed an Answer on December 17, 2018. On December 20, 2018, the Bureau of Investigation and Enforcement (“I&E”) filed a Motion to Reject or Hold in Abeyance Pennsylvania-American Water Company’s Amended Application (“I&E’s Motion to Reject or Hold in Abeyance”). PAWC filed an Answer on December 26, 2018.

On December 28, 2018, Exeter filed a Petition to Intervene. On January 7, 2019, the Borough of St. Lawrence (“St. Lawrence”) filed a Petition to Intervene. On January 9, 2019, Exeter filed an Answer to I&E’s Motion to Reject or Hold in Abeyance. On January 14, 2019, St. Lawrence filed the “Response of Intervenor, Borough of St. Lawrence to Application for Certificate of Public Convenience and Application for Approval of Transfer.”

The OCA filed a Protest and Public Statement on January 14, 2019, and a Petition for Stay on that same date. PAWC filed an Answer to the Petition for Stay on January 16, 2019, and Exeter filed an Answer to the Petition for Stay on February 4, 2019.

On February 8, 2019, the Commission issued the following four Secretarial Letters:

-- one addressed to the OCA indicating that the documents it filed on December 14, 2018 and January 14, 2019 were filed at an inactive docket, and would be addressed if the docket became active;

-- one addressed to I&E indicating that the document it filed on December 20, 2018 was filed at an inactive docket, and would be addressed if the docket became active;

-- one addressed to Exeter indicating that the documents it filed on January 9 and February 4, 2019 were filed at an inactive docket, and would be addressed if the docket became active; and

-- one addressed to PAWC indicating that its filings of December 17, 2018, December 26, 2018, and January 16, 2019 were filed at an inactive docket, and would be addressed if the docket became active.

On March 8, 2019, PAWC notified the Commission that PAWC would shortly begin giving the required customer notices. On April 15, 2019, PAWC filed a verification stating that it had complied with all required customer notices. Consequently, on April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing. PAWC subsequently provided notice of the Application to certain municipalities, water and wastewater utilities, and state agencies. On April 27, 2019, notice of the Amended Application was published in the *Pennsylvania Bulletin*, with a deadline of May 14, 2019 for filing Protests or Petitions to Intervene.

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

This case involves 66 Pa. C.S. §§ 507, 1102 and 1329. As the Commission has interpreted those sections in several recent decisions, including but not limited to *Application of Pennsylvania-American Water Company Wastewater for the Acquisition of the Wastewater Assets of The Municipal Authority of the City of McKeesport*, Docket No. A-2017-2606103 (Final Order entered October 26, 2017), *In re: Application and related filings of Pennsylvania-American Water Company under Sections 507, 1102(a), and 1329 of the Pennsylvania Public Utility Code, 66 Pa.*

C.S. §§ 507, 1102(a), 1329, for approval of its acquisition of wastewater system assets of Sadsbury Township, related wastewater service rights, fair market valuation ratemaking treatment, deferral of the post-acquisition improvement costs, and certain contracts with municipal corporations, Docket No. A-2018-3002437 (Final Order entered October 25, 2018), the legal issues are well defined.

A. Preliminary Matters

The ALJ should address the various motions and petitions that have been filed to date. Specifically, the ALJ should:

-- deny the OCA's Petition to Reject or Hold in Abeyance on the grounds it is now moot;

-- deny I&E's Motion to Reject or Hold in Abeyance for the reasons stated in PAWC's Answer to that Motion;

-- grant Exeter's Petition to Intervene;

-- grant St. Lawrence's Petition to Intervene; and

-- deny the OCA's Petition for Stay for the reasons stated in PAWC's Answer to that Petition.

B. Satisfaction of Section 1102 Standards

PAWC submits that the Transaction is necessary or proper for the service, accommodation, convenience or safety of the public. PAWC submits that the Transaction provides substantial affirmative public benefits and that PAWC, as an existing public utility, is presumed to possess the legal, financial, and technical fitness to own and operate the Exeter System. Indeed, PAWC is the largest investor-owned water and wastewater service provider in the Commonwealth and has

existing operations overlapping the majority of the System. The Transaction will promote the Commission's goal of regionalization and consolidation, and the purchase price is reasonable in light of the appraisals that have been performed by the Utility Valuation Experts (singularly, "UVE" or, collectively, "UVEs"). Commission approval of the Transaction will open the possibility of further consolidation and regionalization of wastewater services in south-central Pennsylvania.

C. Satisfaction of Section 1329 Standards

PAWC submits that it has complied with all of the requirements of Section 1329. The negotiated purchase price for the acquired assets is \$96,000,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$102,968,500 (in round figures, \$101,817,000 AUS + \$104,120,000 Gannett Fleming Valuation and Rate Consultants, LLC = \$205,937,000/2 = \$102,968,500). Accordingly, the negotiated purchase price of \$96,000,000 is the fair market value for ratemaking purposes under Section 1329 (*i.e.*, the lower of the negotiated purchase price and the average of the UVEs' appraisals).

The Asset Purchase Agreement between PAWC and Exeter ("APA") does not contain a "rate stabilization plan" as defined by Section 1329. As permitted by Section 1329, PAWC has petitioned -- as part of the instant filing -- for approval to implement a Distribution System Improvement Charge with respect to customers in the applied-for service territory. PAWC has also, in accordance with Section 1329, petitioned for approval to accrue and defer certain post-acquisition improvement costs associated with the provision of service in the applied-for territory.

D. Certificates of Filing or Approvals for Section 507 Agreements

Section 507 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 507, generally requires PAWC to file with the Commission any agreement between PAWC and a municipal corporation. PAWC seeks either Certificates of Filing or approvals of the APA and the agreements with municipal corporations that it will be assuming as a result of the transaction. In addition, PAWC is in the process of negotiating an agreement with St. Lawrence Borough. A *pro forma* version of the agreement was filed with the Amended Application, and, upon execution, the final version will be provided to the Commission as a supplement to the Amended Application.

V. WITNESSES

PAWC expects to call the following witnesses and provide their testimony in written question and answer form:

Mr. Bernard J. Grundusky, Jr.

Mr. Grundusky is Senior Director, Business Development for PAWC. Mr. Grundusky's business address is 852 Wesley Drive, Mechanicsburg, PA 17011 and his business phone number is (717) 550-1590. Mr. Grundusky will provide an overview of the Transaction and will explain why the Transaction is in the public interest and provide affirmative public benefits of a substantial nature. He will also explain why the Amended Application should be promptly approved by the Commission. In addition, he will discuss why PAWC is legally, financially, and technically fit to acquire and operate the System.

Mr. James A. Gable

Mr. Gable is Senior Manager of Operations, Eastern Pennsylvania for PAWC. Mr. Gable's business address is 171 West Johnson Highway, Norristown, PA 19401 and his business phone number is (610) 292-3568. He will describe the anticipated day-to-day operations of the System and several customer service enhancements that PAWC intends to implement for the System.

Mr. David R. Kaufman, P.E.

Mr. Kaufman is Vice President – Engineering for PAWC. His business address is 852 Wesley Drive, Mechanicsburg, PA 17011 and his business phone number is (717) 550-1610. He will describe the System and related topics, including: environmental compliance, an Industrial Pretreatment Program that PAWC will adopt, and PAWC's overall technical fitness to acquire and operate the System.

Mr. Rod P. Nevirauskas

Mr. Nevirauskas is the Senior Director of Rates and Regulations for the Mid Atlantic Division of American Water Works Service Company. Mr. Nevirauskas's business address is 852 Wesley Drive, Mechanicsburg, PA 17011 and his business phone number is (717) 550-1580. He will testify to PAWC's financial fitness to acquire and operate the System. He will also identify the ratemaking rate base, estimate the transaction and closing costs incurred by PAWC, summarize the rate provisions in the APA, and describe the benefits of the Transaction. In addition, he will explain PAWC's intentions with respect to the accrual of certain post-acquisition improvement costs and deferral of related depreciation.

Mr. Jerome Weinert, ASA, PE, DCP

Mr. Weinert is a Principal and Director in the consulting operation of Associated Utility Services, Inc. Mr. Weinert has a business address of 8555 West Forest Home Avenue, Suite 201, Greenfield, WI 53228. He will describe the fair market value appraisal of the System that he and his staff performed on behalf of PAWC.

PAWC reserves the right to call additional witnesses and present testimony on additional issues that may arise during the course of the proceeding.

VI. DISCOVERY

On April 18, 2019, the OCA filed a Motion to Expedite Discovery. This Motion became moot when the ALJ advised the parties by e-mail on April 19 that his Prehearing Conference Order would contain modifications to the Commission's Rules of Administrative Practice and Procedure regarding discovery. Those modifications were subsequently set forth on page 4 of the Prehearing Conference Order dated April 22, 2019. PAWC does not believe any further modifications to the rules regarding discovery are necessary at this time.

VII. PROTECTIVE ORDER

PAWC will shortly file a Petition for Protective Order in this proceeding.

VIII. PROCEDURAL SCHEDULE

The parties have agreed to the following procedural schedule:

Non-Company Direct Testimony	June 7, 2019
Rebuttal Testimony	June 18, 2019
Surrebuttal Testimony	June 26, 2019
Hearings (With Oral Rejoinder Testimony)	June 27-28, 2019

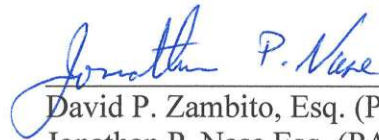
Main Briefs
Reply Briefs
Recommended Decision
Exceptions
Replies to Exceptions

July 10, 2019
July 18, 2019
August 9, 2019
August 19, 2019
August 27, 2019

IX. SETTLEMENT DISCUSSIONS

PAWC believes that there is a reasonable possibility of settlement. PAWC is open to and available for settlement discussions with the other parties, and will take the initiative to schedule settlement conferences as soon as reasonably possible.

Respectfully submitted,



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Date: May 13, 2019

Counsel for *Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket No. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition of :
wastewater system assets of Exeter Township :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **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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Date: May 13, 2019