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May 15, 2019

VIA e-Filing

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 pursuant to Sections 507, 1102(a), and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 507, 1102(a) and 1329, for approval of its acquisition of the water system assets of Steelton Borough Authority

Docket No. A-2019-3006880

Prehearing Memorandum of Pennsylvania-American Water Company

Dear Secretary Chiavetta:

Enclosed please find the Prehearing Memorandum of Pennsylvania-American Water Company in the above-referenced matter.

Copies have been served on the parties as indicated on the enclosed Certificate of Service. If you have any questions regarding this filing, please feel free to contact me.

Sincerely,

Susan Simms Marsh

Enclosures

cc: Honorable Steven K. Haas
Honorable Benjamin J. Myers
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge Steven K. Haas
and
Administrative Law Judge Benjamin J. Myers**

Application of Pennsylvania-American :
Water Company under Section 1329 of :
the Pennsylvania Public Utility Code, :
66 Pa. C.S. § 1329, for approval of the use :
for ratemaking purposes of the lesser of the : Docket No. A-2019-3006880
fair market value or the negotiated purchase :
price of the Steelton Borough Authority’s :
assets related to its water treatment, :
transportation and distribution facilities and :
other related transactions :

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

Pennsylvania-American Water Company (“PAWC”), pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order dated April 18, 2019, issued by the Honorable Steven K. Haas and the Honorable Benjamin J. Myers, Administrative Law Judges, hereby files this Prehearing Memorandum in the above-captioned matter, and states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 2, 2019, PAWC filed an application in the above matter under Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the

Code, 66 Pa. C.S. § 1329, requesting (among other things) approval from the Commission to issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the Steelton Borough Authority's ("Steelton") assets, properties, and rights related to Steelton's water treatment, transportation and distribution facilities (the "Steelton System") and to set the fair market value of the acquisition for rate-base ratemaking purposes (the "Application").

By Secretarial Letter dated January 17, 2019 (the "Secretarial Letter"), the Commission conditionally accepted for filing the Application and, *inter alia*, directed PAWC to provide individualized notice of the proposed acquisition to all potentially affected PAWC and Steelton customers and to amend its Application to include a tariff or *pro forma* tariff supplement adopting rates equal to the rates of Steelton at the time of the acquisition pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329(d)(1)(v). On February 19, 2019, PAWC filed an Amended Application amending PAWC's *pro forma* tariff.

On March 8, 2019, PAWC informed the Commission that it was beginning to provide individualized customer notice to all potentially affected customers of the proposed acquisition and provided the Commission with a copy of such notice.

On April 5, 2019, pursuant to the Secretarial Letter, PAWC served copies of the Application and Amendment upon proximate municipal entities and water and wastewater providers.

On April 11, 2019, PAWC filed proof of publication of the notice of the proposed acquisition in The Patriot News for two consecutive weeks.

On April 15, 2019, PAWC informed the Commission that PAWC had complied with the Secretarial Letter and provided a verification confirming satisfaction of the conditions established in the Secretarial Letter.

On April 16, 2019, the Commission issued a Secretarial Letter indicating that the Application was accepted for filing and the matter referred to the Office of Administrative Law Judge for disposition.

Notice of the filing was published in the *Pennsylvania Bulletin* on April 27, 2019. That notice established the deadline for filing protests and petitions to intervene as May 14, 2019.

The Commission's Bureau of Investigation and Enforcement ("I&E") entered its appearance on January 23, 2019. The Pennsylvania Office of Consumer Advocate ("OCA") filed a Petition for Appeal of Staff Action and/or Determination of Finality on January 24, 2019, and on February 5, 2019, filed a Protest and Public Statement. Petitions to Intervene were filed by Steelton and the Office of Small Business Advocate on January 22, 2019 and February 6, 2019, respectively.

Concurrent with filing this prehearing memorandum, PAWC filed a Petition for Protective Order to protect confidential and proprietary information. In that Petition, PAWC noted that it had contacted counsel for OCA, OSBA and I&E, and none objected to the entry of the proposed protective order. PAWC has also confirmed that Steelton has no objection to entry of the proposed protective order.

By Prehearing Conference Order dated April 18, 2019, Administrative Law Judges Hass and Myers advised the parties of a prehearing conference on May 17, 2019. This Prehearing Memorandum is filed in anticipation of that Prehearing Conference.

II. COUNSEL

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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 hard copies of documents be served on Susan Simms Marsh 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. Satisfaction of Section 1102 Standards

This proceeding involves 66 Pa. C.S. §§ 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.

PAWC submits that the proposed 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 Steelton System. Indeed, PAWC is the largest investor-owned water and wastewater service provider in the Commonwealth and has existing operations in the proximity of the Steelton System.

B. Satisfaction of Section 1329 Standards

PAWC submits that it has complied with all of the requirements of Section 1329. Accordingly, the fair market value ratemaking rate base of the Steelton System is the average of the appraisals of the seller and buyer Utility Valuation Experts (“UVEs”) (\$22,340,695) because that figure is lower than the negotiated purchase prices of the Steelton System (\$22,500,000).

The Asset Purchase Agreement between PAWC and Steelton (“APA”) does not contain a “rate stabilization plan” as defined by Section 1329. Moreover, the APA expressly recognizes the Commission’s ratemaking authority and PAWC’s right to seek rate relief from the Commission.

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.

V. WITNESSES AND EVIDENCE

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

Mr. Scott Fogelsanger

Mr. Fogelsanger is Senior Manager of Business Development for PAWC. Mr. Fogelsanger's business address is 852 Wesley Drive, Mechanicsburg, Pennsylvania, 17055. Mr. Fogelsanger's business phone number is (717) 550-1625. Mr. Fogelsanger will provide an overview of the transaction and the public benefits that will result from the transaction. The transaction fosters the Commission's stated goal of regionalizing water systems to provide greater environmental and economic benefits to customers. He will also address PAWC's legal, financial, and technical fitness to acquire and operate Steelton's system. Additionally, Mr. Fogelsanger will explain why the Application should be promptly approved by the Commission.

Mr. David R. Kaufman

Mr. Kaufman is Vice President – Engineering for PAWC. Mr. Kaufman's business address is 852 Wesley Drive, Mechanicsburg, Pennsylvania, 17055. Mr. Kaufman's business phone number is (717) 550-1625. Mr. Kaufman will address Steelton's water treatment, transportation and distribution facilities to be acquired by PAWC, plant performance, engineering and environmental compliance issues associated with the Steelton System, and PAWC's technical fitness to operate the Steelton System.

Mr. John R. Cox

Mr. Cox is employed by American Water Works Service Company as the Director of Rates and Regulations for the Mid Atlantic Division, which includes PAWC. Mr. Cox's business address is 852 Wesley Drive, Mechanicsburg, Pennsylvania, 17055. Mr. Cox's business phone number is

(717) 550-1625. Mr. Cox will testify to PAWC's financial fitness to acquire and operate the Steelton 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. Joseph F. Woodward, Jr.

Mr. Woodward is Senior Manager, Central PA Operation, for PAWC. Mr. Woodward's business address is 852 Wesley Drive, Mechanicsburg, Pennsylvania, 17055. Mr. Woodward's business phone number is (717) 550-1625. Mr. Woodward will describe the anticipated day-to-day operations of the Steelton System. He will also testify regarding certain customer service enhancements that PAWC intends to implement after closing on the transaction.

Mr. Jerome C. Weinert

Mr. Weinert is employed by Associated Utility Services, Inc., the UVE selected by PAWC from the Commission's pre-approved list of UVEs, as a Principal and Director in its consulting operation (AUS Consultants). Mr. Weiner's business address is 8555 West Forest Home Avenue, Suite 201, Greenfield, Wisconsin, 53228. Mr. Weinert's business phone number is (414) 529-5755. Mr. Weinert will testify regarding AUS Consultants' fair market value appraisal of the Steelton System that he and his staff performed on behalf of PAWC.

PAWC reserves its right to call additional witnesses throughout the course of this proceeding as issues develop. PAWC will provide timely notice to the ALJs and the parties of any additional witnesses.

VI. DISCOVERY

The Prehearing Conference Order modified the regulations regarding discovery, due to the expedited nature of this proceeding, as follows:

- a. Answers to written interrogatories shall be served in-hand within five (5) calendar days of service.
- b. Objections to interrogatories shall be communicated orally within two (2) calendar days and in writing within three (3) calendar days of service of the interrogatories.
- c. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of the written objections.
- d. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of such motions.
- e. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within five (5) calendar days.
- f. Requests for admissions will be deemed admitted unless answered or denied within three (3) calendar days of service.
- g. Discovery and all discovery-related pleadings, such as objections, motions or answers, served after 12:00 noon on a Friday or after 12:00 noon the day before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.
- h. The parties are directed to make every reasonable effort to comply with the discovery response times set forth in this agreement. In those instances when compliance is not possible, despite a party's best efforts, the responding party shall so advise and the parties shall work together to address the requests and responses on a timely basis.

- i. These discovery rule modifications are for the limited purpose of this proceeding and should not be viewed as binding, or otherwise limiting, upon positions taken by the parties in any other proceeding.

VII. PROTECTIVE ORDER

PAWC is filing a Petition for Protective Order concurrently with this prehearing memorandum. As noted therein, OCA, OSBA, and I&E have no objection to the Petition. Likewise, PAWC has consulted with Steelton and they have no objection. PAWC respectfully requests that the ALJs promptly issue the requested Protective Order.

VIII. PROCEDURAL SCHEDULE

In light of the “non-negotiable” due date for reply briefs of July 12, 2019 provided for in the April 18, 2019 Prehearing Conference Order, the parties have agreed to the procedural schedule that follows:

Prehearing Conference	May 17, 2019
Direct Testimony of other parties	May 22, 2019
Rebuttal Testimony	May 30, 2019
Surrebuttal Testimony	June 6, 2019
Rejoinder Outline	June 7, 2019
Hearings with Oral Rejoinder	June 10, 2019
Receipt of Transcript	June 11, 2019
Main Briefs	July 2, 2019
Reply Briefs	July 12, 2019

The parties have agreed that a hearing scheduled for this docket will not exceed one day. In addition, PAWC is still determining whether it will submit testimony in response to direct testimony provided by Steelton's UVE witness. Although rebuttal would be the appropriate time to submit such testimony, given the expedited nature of this proceeding, PAWC offers to submit such "rebuttal" testimony on the date set for the direct testimony of other parties, if agreed to by the other parties and the ALJs.

IX. SETTLEMENT DISCUSSIONS

The legal issues raised in this matter are very limited. Accordingly, PAWC believes that there is a reasonable possibility of settlement. PAWC is open to and available for settlement discussions with the other parties and has scheduled an initial settlement conference for May 29, 2019.

Respectfully submitted,



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Dated: May 15, 2019

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American :
Water Company Pursuant to Section 507, :
1102, and 1329 of the Pubic Utility Code : Docket No. A-2019-3006880
for Approval of it's Acquisition of the :
Water Assets of Steelton Borough Authority :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Prehearing Memorandum of Pennsylvania-American Water Company, 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 USPS FIRST-CLASS MAIL

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Prehearing Memorandum of
Pennsylvania-American Water Company
Docket No. A-2019-3006880
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The Prehearing Memorandum and Certificate of Service have been electronically filed on the Pennsylvania Public Utility Commission's eFiling system.

Dated: May 15, 2019



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