

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application and Related Filings of : Docket No. A-2018-3004933
Pennsylvania American- Water Company :
Under Sections 507, 1102(A), and 1329 of :
the Pennsylvania Public Utility Code, 66 :
Pa.C.S.A. §§ 507, 1102(A), and 1329 for :
Approval of its Acquisition of Wastewater :
System Assets of Exeter 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-2018-3004933, :
Et Al. :

BRIEF OF INTERVENOR,
BOROUGH OF ST. LAWRENCE, BERKS COUNTY

KOZLOFF STOUDT
Professional Corporation

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I. STATEMENT OF THE CASE

This Brief is filed in support of the position of Intervenor, Borough of St. Lawrence, Berks County ("Borough") with respect to claims against Exeter Township, Berks County ("Township"). It is the position of the Borough that those claims are properly addressed in the above-captioned proceeding, as the interests of Borough residents require that the Borough be adequately compensated for its considerable investments in the wastewater treatment plant over a period in excess of fifty (50) years. If the Borough is not compensated for its contributions, which are above and beyond the value of services rendered, and which have benefitted the Township, the Township will sustain a windfall in the sale of the plant at an estimated \$96 million to Pennsylvania-American Water Company. The Commission has the power to impose conditions in proceedings under Section 1329 of the Public Utility Code, 66 Pa.C.S.A. Section 1329, and should do so in this case for the protection of the Borough and its residents who are users of the waste water treatment plant, as described below. The facts relevant to the Borough's position are as follows:

The Borough is located in the central part of Berks County, and is substantially surrounded by the Township, with a population of 1,810 residents. (Testimony of Robert J. May ("May"), pg. 2:15-18).¹ The Borough is served by a public sanitary sewer system, which is a collection system connecting to the Township public sewer system. (May Direct Testimony, pg. 3:12-14; May Sur-Rebuttal Testimony, pg. 3:5-6). The Borough is

¹ May has been a member of Borough Council for approximately eighteen (18) years, and has been Borough Council President for approximately the past ten (10) years. (May Direct Testimony, pgs. 2:19-3:3).

billed as a bulk customer. The Borough's collection system, and its connection to the Township sewer system have been governed by a succession of agreements between the Township and Borough, and their respective municipal authorities, which have since dissolved, since 1967. (May Direct Testimony, pg. 4:6-8). There have been five (5) agreements in place between the municipalities, summarized as follows:

- February 1, 1967 (Borough Exh. 1) - Initial agreement for construction of the Township sewer system and the Borough collection system, assigning the Borough an 11.5% share of average daily flows in the Township Plant, and requiring an annual capital contribution by the Borough based on percentage of total flows to the plant. (May Direct Testimony, pgs. 3:19-5:8).
- April 1, 1978 First Supplemental Agreement (Borough Exh. 2) - Confirmed Borough's pro rata share of capital costs based on cost of construction for improvements required by the Pennsylvania Department of Environmental Resources. (May Direct Testimony, pgs. 5:21-6:17).
- August 15, 1982 Second Supplemental Agreement (Borough Exh. 3) - Reallocation increasing Borough's allocation of average daily flow, and providing for additional capital contributions, with a required lump sum contribution of \$16,892 payable in thirty (30) days, and additional annual contributions of \$9,580 per year. (May Direct Testimony, pgs. 7:12-8:4)
- January 20, 1992 Third Supplemental Agreement (Borough Exh. 4) - Acknowledged that the wastewater treatment plant had been re-rated, and provided for additional capital contribution, including an initial up-front contribution of \$11,032, and continuation of the annual contribution of \$9,590. (May Direct Testimony, pgs. 8:9-9:8).
- May 8, 2003 Agreement (Borough Exh. 5) - Agreement which superseded the prior agreements and provided for plant expansion to 7.1 million gallons per day, allocating the Borough 0.462 million gallons per day of flow (6.51% of average daily flow), and acknowledged payment by the Borough of \$641,250 the Township Municipal Authority

as an initial payment on the proportionate share of the Borough. (May Direct Testimony, 9:20-11:8).

The 2003 agreement acknowledged that St. Lawrence had incurred past debt and was making debt service payments which would be ongoing to November 20, 2022. (May Direct Testimony, 11:21-12:6). The Borough has also made significant contributions to upgrades of the wastewater treatment plant since its 1992-1993 expansion, and contributed towards the acquisition installation of a sludge dryer by the Township, which was intended as a source of revenue, which would be credited to the Borough's bills for sewage treatment. (May Direct Testimony, 13:15-18; May Sur-Rebuttal Testimony, pgs. 8-11; May Hearing Testimony, pgs. 74:25-75:13). The expectation was that the Township would process sewage sludge from not only its own plant, but would sell the services to others, and would also be able to sell the processed sludge, which is a Class A Biosolid for application on farm fields as an organic fertilizer, in addition to minimizing Township costs for transport of sludge. (May Sur-Rebuttal Testimony, pg. 4:1-7). Furthermore, the Borough incurred debt to correct inflow and infiltration (I & I) into the sewer system, with projects between 2000 and 2013. May testified at the hearing that there had been "wild invoicing from [the Township]" on quarterly sewer bills, with variances of seventy to eighty percent, making it difficult for the Borough to project its costs for its residents. The Township claimed that this was the result of I & I from the collection system from groundwater and stormwater, and that projects were undertaken as a result. (May Hearing Testimony, pg. 71:8-21). These projects were of benefit to the Township, as it protected the plant from I & I. Additionally, there are Exeter flows through the Borough

collection system, for which the Township has not been charged. (May Hearing Testimony, pg. 73:1-8). The projects were as follows:

Year	Work Performed
2000	Sanitary Sewer Lining Project on mains along Oley Turnpike Road and Prospect Street, totaling 2,510 linear feet.
2003-2006	Installed rain shields in 237 manholes to reduce I & I and sediment runoff into the collection system.
2006	Televised sections of the sewer
2006	I & I abatement project of heavy cleaning, treatment of roots in mains, testing and grouting of mains and lateral connections, and spot repairs using Cured In Place Point (CIPP) repairs.
2007	Televising and cleaning of the entire collection system (43,269 linear feet of sanitary sewer main). In accordance with the Pipeline Assessment Certification Program (PACP) of the National Association of Sewer Service Companies (NASSCO). USG, in accordance with the NASSCO PACP standards, televised approximately
2008	Sewer main lining of 1,330 linear feet of 10" sewer main from Manhole 1.5E (near Meter Pit #3) to Manhole 5E, which is located near Lynn Avenue; 70 foot CIPP Point Repair of 12" sanitary sewer main to repair a known source of infiltration in the line in Bingaman Street between Manhole 15.05W and Manhole WC 15W; CIPP Point Repair of 12" sanitary sewer main repair at a known source of infiltration in the Bingaman Street line between Manhole 16W and Manhole 15.05W Repair of active infiltration in Manhole 14.11W.

- 2010 Full pipe lining, CIPP Point Repairs, lining of manholes, and televising of laterals, including:
- Lining of 4,871 linear feet of 8" sewer main;
 - Lining of 1,625 linear feet of 10" sewer main;
 - Lining of 2,055 linear feet of 12" sewer main;
 - Installation of 28 separate 8" CIPP Point Repairs;
 - Lining of 70 sanitary sewer manholes; and,
 - Televising of 1,542 linear feet of sewer laterals.
- 2013 Manhole rehabilitation project (repair of leaking Manholes 2T and 1T)
- 2013 Televising selected portions of the collection system discharging into Meter Pit #4

(May Sur-Rebuttal Testimony, pgs: 6:10-7:19; 9:1-8; Borough Exh. 9). The 2010 sewer project had a cost of \$443,000, for which loans were also taken.

The hearing in this matter was held before the Administrative Law Judge on June 28, 2019, and its subject matter was limited to procedural issues, and testimony on the claims of the Borough. The Borough does not object to the settlement of collateral claims, including the Nunc Pro Tunc issuance of Certificate of Public Convenience for the provision of service in Lower Alsace Township. However, any resolution of these proceedings must fully compensate the Borough for its considerable expenditures and undertaking of debt for the construction and expansion of the Township plant, which has and will continue to benefit the Township.

II. SUMMARY OF ARGUMENT

The Public Utility Code permits the imposition of conditions to the sale of a government-owned utility to a public utility. In this case, the proposed sale will not provide public benefit to the residents of the Borough of St. Lawrence unless St. Lawrence is compensated for its debt service payments, and its loss of the septage credit. Accordingly, the Commission can give relief and condition the completion of the sale on payment to the Borough.

III. ARGUMENT

The Public Utility Code allows for the imposition of conditions to a sale of a municipal utility to a certified public utility. In *McCloskey v. Pennsylvania Public Utility Commission (New Garden Township/New Garden Township Municipal Authority)*, 195 A.3d 1055 (Pa. Commw., 2018), the Commonwealth Court held that Section 1103(a) of the Public Utility Code, 66 Pa.C.S.A. Section 1103(a), “provides that the acquiring utility must prove that granting it a Certificate is necessary or proper for the service, accommodation, convenience or safety of the public, as well as allowing the Commission to place conditions on the transfer” Section 1103(a) states, in relevant part:

A [Certificate] shall be granted by order of the [C]ommission, only if the [C]ommission shall find or determine that the granting of such [Certificate] is necessary or proper for the service, accommodation, convenience, or safety of the public. The [C]ommission, in granting such a [Certificate], may impose such conditions as it may deem to be just and reasonable. In every case, the [C]ommission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a [Certificate], exercising the authority conferred by such [Certificate], shall be deemed to have waived any and all objections to the terms and conditions of such [Certificate].

Id. at 1058-59. The *New Garden* Court further held, in support of the right to impose conditions, that the public was required to be protected in the case of a sale of a municipal utility facility to a private utility facility:

While Section 1329 establishes the method for determining the ratemaking rate base for the acquired plant, Sections 1102 and 1103 of the Code, together with Section 1329, require an applicant not only show that no harm will come from the transaction but also to establish that substantial affirmative benefits flow to its ratepayers. *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825, 828 (Pa. 1972). To establish that there are substantial affirmative benefits, our Supreme Court held that: [T]hose seeking approval of a utility merger [must] demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *Id.* at 828. Our Supreme Court has further held: In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the [Commission] properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters." *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040, 1057 (Pa. 2007) (Verizon). In addition, "in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue." *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

New Garden, supra, 195 A.3d at 1064.

The Borough was not a mere customer paying for service: The Borough incurred debt most recently in 1993 for the plant expansion, which is to be paid in full by November 20, 2021, and in 2010 for the sludge dryer, on which the Borough will be making payments until 2026 (with total debt amortized of \$405,334.10 as of March 31, 2011, May Sur-Rebuttal Testimony, pg. 11:2; Borough Exh. 10). Exhibit "I" to the 2003 Agreement (Borough Exh. 5) shows that in 1993, the total amount financed by the

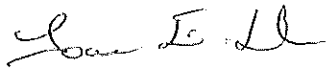
Borough was \$238,183, which, with debt service payments to 2022, as originally financed, totaled \$530,464.63. May further testified to shared capital costs (6.51% by the Borough), such as a truck and equipment upgrades for the Exeter plant. (May Sur-Rebuttal Testimony, pgs. 13:11-14:6; Borough Exh. 11).² The Township Manager, John Granger, admitted in testimony that the Borough was to be compensated for its debt service obligations, See, Granger Testimony, pg. 4:20-21). The septage credit should be similarly compensable: The credit has been acknowledged in Township invoices to the Borough, and appears in Township invoices to the Borough, making it clear that the credit was a reasonable expectation to continue and carry forward. Conditions attached to the sale, requiring the compensation of the Borough, are necessary to carry out the objectives of Section 1103(a) of the Public Utility Code. In this case, the conditions need to include the compensation of the Borough, to prevent the Borough and ultimately its residents from bearing an unfair, unreimbursed burden of debt service and loss of a valuable credit against invoices, while the Township enjoys a windfall from an approximately \$96 million sale of its waste water plant, to which the Borough, which is far smaller in land area, resources, population and tax base, has significantly contributed.

² The debt service payments for 2019 were the subject of May's Sur-Rebuttal Testimony (May Sur-Rebuttal Testimony, pgs. 14:17-17:9; Borough Exh. 6)

IV. CONCLUSION

For the foregoing reasons, it is respectfully requested by Intervenor, Borough of St. Lawrence, that the Borough be compensated for debt service payments and loss of the septage credit as a condition of the completion of the sale of the wastewater treatment plant by Exeter Township to Pennsylvania-American Water Company.

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CERTIFICATE OF SERVICE

I, Joan E. London, Esquire, certify that I have, on this date, served a true and correct copy of the following document, Brief of the Borough of St. Lawrence, Berks County, Pennsylvania, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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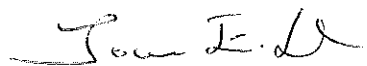
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