

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. :

**SUR-REPLY BRIEF OF INTERVENOR,
BOROUGH OF ST. LAWRENCE, BERKS COUNTY**

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I. STATEMENT OF THE CASE

This Sur-Reply 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”). St. Lawrence incorporates by reference all averments of fact and arguments of law contained in its Main Brief as though the same were set forth at length.

II. 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 was clear that the conditions permitted by Section 1103(a) of the Public Utility Code could permissibly be attached in a Section 1329 proceeding to protect the public interest, and to ensure affirmative public benefit. Although the power to impose conditions is not without limitation, the Commission has broad latitude and discretion in fashioning conditions. See, *Rheems Water Co. v. PUC*, 620 A.2d 609 (Pa. Commw. 1993), citing *Seaboard Tank Lines, Inc. v. PUC*, 502 A.2d 702 (1985).

The claims of the Borough against Exeter Township are not a mere “contract dispute” as the Township would portray them to be. In this case, the public interest is not served where St. Lawrence, and by definition its residents, are not compensated for, and forced to continue to pay, debt service on a wastewater treatment plant and sludge dryer, for which Exeter Township is receiving approximately \$93 million from its sale.

The Township is able to insulate its residents against inevitable rate increases in ways that the Borough cannot, and the Borough is unfairly prejudiced if the Township is not required to make the Borough whole so that it, too, can protect its residents from rate increases. The imposition of a condition of compensation concomitant with five decades of capital contributions, and debt incurred in 1993 and 2010 is well within that wide latitude to protect the public interest, and well within the jurisdiction of the Commission under Section 1103(a). Contrary to the arguments of the Township, the amount of the debt was quantified in the testimony of Robert May, including amounts of loans, when taken, and current amount due. Further, the Borough's raising of the claims with respect to Exeter is in no way a conversion of the proceedings, where Exeter has been well aware of these claims, and the Petition for Intervention, filed in January 2019, set forth these claims as partial grounds for intervention by the Borough as follows:

10. The Borough has an interest which is directly affected by the Township Application for Approval of Transfer of the wastewater collection and treatment system to PAWC under Section 1102(a) of the Public Utility Code, 66 Pa.C.S.A. §1102(a), and to the Application to serve residents of Lower Alsace and Alsace Townships, utilizing four (4) bulk service interconnection points with the Borough as follows:

a) The addition of new customers in Lower Alsace Township and Alsace Township, per the Application, will create additional flows through the Borough collection system into the Township sewage treatment plant;

b) Additional flows through the Borough collection system will be difficult to allocate between Borough properties and properties in Lower Alsace Township and Alsace Township for purposes of measurement, billing, determination of violations of sewer use regulations, and determination of sources of infiltration and inflow; and,

c) The Borough has incurred expenses and debt for the construction, maintenance, and improvement of its collection system, which collection system will likely be directly impacted by the addition of customers in Lower Alsace Township and Alsace Township in the event that the PUC grants the Application allowing sewage flows through the Borough's interconnection points; and,

d) The Borough has incurred expenses for wastewater treatment plant costs, including but not limited to plant construction and expansion under agreements with the Township, and currently makes debt service payments as a result, and the grant of the Application for Transfer to PAWC may impact Borough and Borough resident costs, rates, and other terms and conditions of service.

11. The Borough seeks intervention under 52 Pa.Code § 5.72(2), due to its direct interest in the outcome of the proceedings.

(Petition for Intervention (emphasis added)). Exeter Township did not object at that time to the Intervention for the reasons stated, and should not be permitted to do so now.¹

III. 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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¹ Exeter has also objected on the grounds that the May 8, 2003 Agreement provides for arbitration of disputes. It is the position of the Borough that this applies to billing and technical disputes, as evidenced by the fact that the arbitrators are to be engineers, not attorneys or other professionals.

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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, Sur-Reply 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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Dated: July 10, 2019