

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG PENNSYLVANIA 17120**

**Investigation Instituted per Section 529  
Into Whether the Commission Shall Order  
a Capable Public Utility to Acquire  
Delaware Sewer Company**

**Public Meeting held March 11, 2021  
2526085-OSA  
Docket No. I-2016-2526085**

**MOTION OF VICE CHAIRMAN DAVID W. SWEET**

Before the Commission is the Petition of the Delaware Sewer Company (DSC) to Order Pennsylvania-American Water Company (PAWC) to Close the Transaction by March 1, 2021 and the Answer and New Matter of PAWC in opposition. This appears to be a petition to enforce the Commission's prior Order approving the acquisition of DSC by imposing a deadline for closing the transaction that was not provided for in the Order.

By way of background, the underlying case was instituted in 2014 when Delaware Sewer Company filed a petition asking the Commission to direct a capable public utility to acquire its wastewater system. On October 12, 2018, the parties to the case, including PAWC, Delaware Sewer, the Commission's Bureau of Investigation & Enforcement (I&E), and the Office of Consumer Advocate (OCA) filed a Joint Petition for Approval of Settlement of All Issues. This was approved by the Commission in a final Order entered March 26, 2020.

The transaction is comprised of the transfer of the assets of the Delaware Sewer Company to PAWC, as well as the purchase of 140 acres of land owned by Forest City Partnership (FCP) that will be used to provide service to the existing 39 homes in the Wild Acres Development in Delaware Township, Pike County as well as to the remaining build-out of the 306 lots. An executed Land Transfer Agreement between FCP and PAWC was attached to the Settlement, which was subsequently approved by the Commission.

Since the Commission's final Order was entered, PAWC has declined to close the transaction because the deed which transfers the mineral rights to an FCP affiliate does not require the affiliate to obtain agreement from PAWC before exercising its rights to extract minerals. Delaware Sewer points out that this separate agreement was not part of the negotiations or settlement, and the FCP affiliate is neither a party to this matter nor subject to the jurisdiction of this Commission.

PAWC responds that first, the Petition seeks to add a term to the Settlement that was not part of the parties' agreement as approved by this Commission, that is, that the transaction close by a certain date. Second, PAWC argues that it is acting responsibly in seeking a Surface Use Agreement with the owner of the mineral rights. It states further that the current delay is caused by a discrepancy between the Indenture form and the FCP-Linde Deed, which does not contain language restricting its use of the surface of the FCP property in the manner described in the appropriate clause of the Indenture Form. PAWC points out that the purchase of the land for the sewer facilities would be wasted if the owner of the mineral rights chooses to use it for gas extraction wells instead.

PAWC is correct that there was no closing date in the ordering paragraphs. The imposition of one now would constitute a material change in the approved Settlement Agreement, which provides that closing will commence within thirty (30) days of completion of a specific list included in that

Agreement. Whether or not that list has been fulfilled is not in the factual record. Therefore, the Commission cannot grant the enforcement action as requested.

We are not inclined to disrupt the Settlement Agreement at this time. Note, too, that in Ordering Paragraph 5 of the Commission's June 13, 2019 Final Order in this matter, PAWC was directed to promptly file notice if it determines that the transaction will not occur. Similarly, Ordering Paragraph 9 effectively provides that DSC will remain a regulated public utility subject to Commission jurisdiction and the Public Utility Code until PAWC files notice that the transaction has closed. Because PAWC has not filed this notice, DSC continues to retain its responsibilities as a public utility.

The Commission's main concern is that the 39 customers of the Delaware Sewer Company receive safe, adequate and reasonable service as soon as possible. The present system includes cracked and broken pipes leading to puddles of effluent on an unprotected sand mound which, due to its lack of fencing, hosts recreational all-terrain vehicles instead of providing a sound, environmentally safe disposal of wastewater. Until this transaction is completed, those customers are not receiving the safe, adequate and reasonable service that all Pennsylvania citizens should be able to expect from a public utility.


Of course, due to the environmental concerns raised by the condition of the Delaware Sewer Company, the remaining lots in the development may not be developed until this system is transferred into PAWC's competent hands, repaired and running.

To give the parties an opportunity to address this issue, I will move that the Commission require the parties to provide an update on their progress no later than three months from the entry date of the Order.<sup>1</sup> At that time, if no progress had been made, the matter will be reevaluated by the Commission's Technical Utility Services, which will make a recommendation that will include a closer scrutiny of the Delaware Sewer Company affiliates and a determination of whether to return the matter to the Office of Administrative Law Judge for an independent determination of the future of the issues. Further, the Petition seeking to require PAWC to close the transaction by March 1, 2021 is denied.

THEREFORE,  
I MOVE:

1. That the Petition of the Delaware Sewer Company to Order Pennsylvania-American Water Company to Close the Transaction by March 1, 2021 is denied.
2. That Pennsylvania-American Water Company shall file an update on the status and progress of this case no later than three months after the date of the Commission's Final Order regarding this matter.
3. That the Commission's Bureau of Technical Utility Services shall evaluate the status update and prepare a recommendation for the Commission, if appropriate.
4. That the Office of Special Assistants prepare an appropriate Order consistent with this Motion.

March 11, 2021  
DATE

  
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DAVID W. SWEET  
VICE CHAIRMAN

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<sup>1</sup> 66 Pa. C.S. §504.