

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P O BOX 3265, HARRISBURG PA 17105-3265

July 27, 2000

A-212285F0071, A-230073F0002

WAYNE G REED EXECUTIVE DIRECTOR
CITY OF COATESVILLE AUTHORITY
114 EAST LINCOLN HIGHWAY
PO BOX 791
COATESVILLE PA 19320

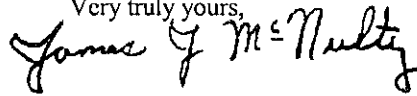
Application of Pennsylvania-American Water Company

Dear Sir:

Enclosed please find a copy of a Prehearing Order No. 1 of Administrative Law Judge Louis G. Cocheres in the above entitled proceeding.

This order is being served on you, in accordance with Paragraph 3 of the Prehearing Order.

Very truly yours,



James J. McNulty
Secretary

Cc: HELEN J ESBENSHADE ESQUIRE
CONRAD O'BRIEN GELLMAN & ROHN PC
17 WEST GAY ST SUITE 100
WEST CHESTER PA 19380-3090

PAUL G JANSSEN JR CITY MANAGER
CITY OF COATESVILLE
ONE CITY HALL PLACE
COATESVILLE PA 19320

JOHN S CARNES ESQUIRE
202 N CHURCH STREET
PO BOX 3449
WEST CHESTER PA 19381-3449

JEP

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of :
Pennsylvania-American Water Company :
for Approval of (1) The Transfer, By Sale, :
of Substantially All of the Water Works :
Property and Rights of the City of :
Coatesville Authority Water System to :
Pennsylvania-American Water Company, :
and (2) The Rights of Pennsylvania- :
American Water Company to Begin to :
Offer or Furnish Water Service to the :
Public in all of the City of Coatesville, :
Parkesburg Borough, and South Coatesville :
Borough, Chester County, Pennsylvania :
and Portions of Sadsbury Township, Caln :
Township, East Fallowfield Township, :
Valley Township, Atglen Borough, West :
Sadsbury Township and West Caln :
Township, Chester County, Pennsylvania :
and Quarryville Borough, Bart Township, :
Colerain Township, Eden Township And :
Sadsbury Township, Lancaster County, :
Pennsylvania; and (3) Certain Additional :
Regulatory Approvals :

Docket No. A-212285F0071

DOCKETED

AUG 02 2000

**DOCUMENT
FOLDER**

In Re: Application of :
Pennsylvania-American Water Company :
for approval of (1) the Transfer, by Sale, :
of Substantially All of the City of :
Coatesville Authority's Assets, Properties :
and Rights Related to its Wastewater :
System to Pennsylvania-American Water :
Company; and (2) The Right of :
Pennsylvania-American Water Company to :
Begin to Offer or Furnish Wastewater :
Service to the Public in the City of :
Coatesville, Parkesburg Borough, Chester :
County, Pennsylvania and in Portions of :
Caln Township, East Fallowfield :
Township, Valley Township, Sadsbury :
Township and West Sadsbury Township, :
Chester County, Pennsylvania; and (3) :
Certain Additional Regulatory Approvals :

Docket No. A-230073F0002

PREHEARING ORDER NO. 1

The purpose of this order is to: 1) review my prior ruling on Section 507 of the Public Utility Code (66 Pa. C.S. §507) after receiving the parties' memoranda, 2) join the City of Coatesville Authority and the City of Coatesville as indispensable parties, 3) adjust the litigation schedule, 4) grant in part the petition to intervene of Caln Township and 5) conditionally grant the protest withdrawal by Sadsbury Township.

A. SECTION 507

At the May 17, 2000 prehearing conference I ruled that the Asset Purchase Agreement between City of Coatesville Authority (CCA) and Pennsylvania-American Water Company (PA-American or Company or applicant) would be subject to a Section 507 review. Tr. 33-34. At the request of PA-American I agreed to review my ruling after receiving memoranda from the parties.

In accordance with my directions PA-American filed its memorandum on May 30, 2000. Responsive memoranda were filed by the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Philadelphia Suburban Water Company (PSW) in a timely manner. Thereafter, PA-American requested the opportunity to file an addendum to its memo. I granted the request conditioned on the opportunity for the other parties to respond. By letter dated June 22, 2000, PA-American filed the addendum. On July 7, 2000, PSW responded.

Having reviewed the memoranda and cases cited therein, the applications, the Asset Purchase Agreement and the Public Utility Code, I found

nothing which persuades me to change my prior ruling. I begin by noting that, after initially arguing Section 507 was not applicable, PA-American acknowledged in its memo that the application of the section was discretionary at these docket numbers. PA-American memo at 4-5. In its addendum, PA-American responded to the PSW arguments. PA-American continued with its position that only a Section 1102 (66 Pa. C.S. §1102) review was required. The Company contended that references in the applications to Section 507 dealt, not with the Asset Purchase Agreement, but other contracts which were not subject to Section 1102. PA-American cited to other asset acquisition application proceedings involving PSW where a Section 507 review was not required. It renewed its argument that a base rate proceeding would be the appropriate opportunity for review of the fire hydrant service provision of the Asset Purchase Agreement. Addendum at 2-8.

The OTS argued that Section 507 permitted the Commission to address the legality of Section 3.4 [free fire hydrant service issue] of the Asset Purchase Agreement. The OTS pointed out that the burden of proof and the standards of review in a Section 507 case for PA-American were different than in a Section 1102 case. It asserted that the nature of the hydrant service issue required review in this proceeding. OTS memo at 3-6.

The OCA noted that PA-American had changed its position from advocating the inapplicability of Section 507 to an admission that the application of Section 507 was discretionary. The OCA restated the issues as involving the legality of contractual provisions which exempted the City of Coatesville from payment of tariffed rates for fire hydrant service and which avoided Commission review of the exemption. Because the Asset Purchase Agreement was a contract between a public utility and a municipal corporation involving the furnishing of service at other than tariffed rates, the OCA argued that the requirements of Section 507 had been met. The

OCA continued that the questions of law and policy raised by the terms of the Asset Purchase Agreement justified the application of Section 507. The OCA pointed out that a definitive statement on the application of Section 507 was needed to be able to use the contract reformation remedy which was specified in Section 508. 66 Pa. C.S. §508. The OCA requested that the appropriate notice be given to all potentially interested municipalities. OCA memo at 2-8.

The OSBA also noted that PA-American had conceded the applicability of Section 507. The OSBA was concerned that the failure to review the terms of the Asset Purchase Agreement in this proceeding would allow Commission acceptance of the contract without the opportunity for modification. It pointed to the provisions for a three year rate freeze and for the City of Coatesville's exemption from payment of fire hydrant rates in combination with the fact that the system currently loses money as reasons for exercising Section 507 jurisdiction. The OSBA conceded that some of the rate issues could be examined in a rate case, but noted that the contract terms would allow the municipality to dictate results which conflicted with the Commission's threshold authority. The OSBA cited cases where a Section 507 review had been applied at the same time as a Section 1102 review. OSBA memo at 1-3.

In PSW's memorandum, it argued that PA-American's effort to seek only a Section 1102 review was contradicted by the application which requested Section 507 approval of other related agreements. PSW also emphasized the provision for Coatesville's free hydrant service as a basis for invoking Section 507 jurisdiction. PSW asserted that the Commission had already established a need to review the free hydrant service provision in *Petition of Philadelphia Suburban Water Company for a Declaratory Order Clarifying a Potential Term in a Contract or Agreement between a Public Utility and a Municipal Corporation*, Order, entered October 1, 1999, at Docket No. P-00991732 (Slip Op.). The PSW reviewed the concepts 1) that a Section

1102 review was different from a Section 507 review, 2) that it disagreed with PA-American's assertion that a Section 507 review would be duplicative of a Section 1102 review and 3) that the scope of the Commission's authority under Section 507 was different than its authority under Section 1102. PSW noted that Section 507 required specific notice to the interested parties and an opportunity to be heard. The PSW continued that the Commission had on prior occasions conduct a Section 507 review concurrent with a Section 1102 application case. The PSW insisted that the provisions of the Asset Purchase Agreement which allowed free hydrant service and which attempted to exempt the free service issue from Commission review presented threshold issues which were best examined in this proceeding. PSW memo at 1-6.

By letter dated July 7, 2000, the PSW filed Philadelphia Suburban Water Company's Motion To Strike Or, In the Alternative, For Leave To File A Reply To The Addendum To The Memorandum Of Law Of Pennsylvania-American Water Company.¹ In its reply, the PSW argued that the PSW application cases cited in PA-American's addendum were distinguishable and that the threshold issues in this case involved the attempt to evade this Commission's authority and to provide a regulated utility service at no charge. It challenged PA-American's purchase of a municipal system as a means for extending its service territory. The PSW contended that the free service issue had the potential to violate Sections 1303 and 1502 of the Public Utility Code. 66 Pa. C.S. §§1303 and 1502. The PSW urged the Commission to exercise its authority pursuant to Sections 507 and 508. It renewed its arguments that PA-American's position was internally inconsistent with its application because the

¹ Apparently, the PSW was not aware that I had granted PA-American permission to file the addendum. Consequently, I will deny the motion to strike and grant the request to reply. The PSW reply was attached to the motion and will be received into the record.

application requested the exercise of Section 507 jurisdiction and that the free service issue raised a jurisdictional (not a rate) issue. PSW Reply at 1-6.

I find that this is a case in which the Commission should exercise its Section 507 jurisdiction. The application alleged that the issues of free hydrant service and a three-year rate freeze were non-negotiable terms in the CCA's original request for proposals. Application ¶9 at 4. The agreement is attached to the application and demonstrated that these items were incorporated into the Asset Purchase Agreement and were consistent with the CCA and the City position. Agreement ¶3.4(a)-(b) at 18. These same items have also become the primary issues for the protestants. The remedial question is whether the agreement should be reformed. Given the contents of the application and the agreement, I find it undeniable that the issues are squarely within the scope of this proceeding. If these items were so important to the CCA and the City as to be "non-negotiable," they are too important to wait until the next rate case as PA-American suggests.

As noted by all the other parties, PA-American changed its position on the applicability of Section 507. PA-American conceded that the application of Section 507 is discretionary in this case. I agree. What I do not agree with is PA-American's suggestion that the discretion should not be exercised. Again, these issues are primary in this case. The application's reference to the non-negotiability of the free hydrant service and rate freeze issues highlighted the importance of these issues to the CCA and the City. The comments made by PA-American representatives at the prehearing conference that the Company may be unwilling or unable to collect hydrant service fees highlighted the importance of the issue to PA-American. Tr. 21-23, 31-32. In addition, I note that the Asset Purchase Agreement specifies that the free hydrant service covenant and other named covenants are not subject to the Commission's approval. Agreement ¶4.2 at 23. Consequently, I

find the other parties' concern about the potential to avoid review to be highly persuasive in my decision to apply Section 507.

My conclusion that the question of free hydrant service is a primary issue is further buttressed by the Commission's reaction to PSW's request for a declaratory order. On July 23, 1999, the PSW filed the Petition of Philadelphia Suburban Water Company for a Declaratory Order. The petition clearly anticipated the issues in this case by seeking Commission guidance regarding non-negotiable provisions not subject to the Commission's approval which permitted free hydrant service to a municipality in perpetuity. The Commission granted the requested relief and specified that, after the acquisition was structured, it would be subject to a review for compliance with the relevant provisions of the Public Utility Code. The Commission continued that the rates charged must comply with approved tariffs. *Petition of Philadelphia Suburban Water Company for a Declaratory Order Clarifying a Potential Term in a Contract or Agreement between a Public Utility and a Municipal Corporation*, Order, entered October 1, 1999, at Docket No. P-00991732 (Slip Op. at 7). In this context, I find Section 507 to be a relevant provision of the Public Utility Code.

PA-American's position (*i.e.* Section 507 should not be applied) was not enhanced by its paragraph 38 of the water application which states:

38. Pursuant to Section 1.5 of the Agreement, Pennsylvania-American is assuming the contractual rights, duties, liabilities and obligations of CCA with respect to the contracts, agreements and commitments relating to the water system. The assumed contracts are identified at Schedule 1.5.1 ("Assumed Contracts"), and include a number of water supply agreements with neighboring municipalities. Pennsylvania-American requests approval from the Commission, pursuant to

Section 507 of the Public Utility Code (66 Pa. C.S. §507), to assume and comply with the contracts, agreements and commitments relating to the CCA's water system which are to be assumed by Pennsylvania-American in accordance with the terms of the Agreement.

Application ¶38 at 13. The PSW argued that in this paragraph the Company was requesting a Section 507 review of Asset Purchase Agreement because PA-American had tendered no other contracts to the Commission for review. While I find that the PSW was procedurally correct about the receipt of the other contracts, I also find the PSW argument a strain on the words of the paragraph. On the other hand, PA-American is clearly invoking the Commission's Section 507 authority. Under these circumstances, I find the Company's effort to limit the scope of the Section 507 review to be tenuous at best. The Commission is not required to exercise its authority as limited by the request of the applicant. There is some merit to the idea that PA-American may have "opened the door" on the issue.

The Company asserted that there is no case which requires a Section 507 review be conducted in conjunction with a Section 1102 review. I find the argument misguided. As noted above, PA-American conceded that the application of Section 507 is discretionary. Next, I note that the Company's application requests a Section 507 review, albeit on different contracts. Further, there is no prohibition in the Public Utility Code which requires the separation of Section 1102 and Section 507 issues into different cases. Finally, the other parties provided at least one example of this Commission's exercise of both its Section 507 and Section 1102 authority in the same case. *See, Application of West Penn Power Company, Recommended Decision of ALJ Gesoff, dated February 20, 1996, at Docket No. A-111250F0065, 1996 Pa. PUC Lexis 32, affirmed and adopted by Commission Order, entered March 14, 1996 (Slip Op).*

Given that I have concluded that there will be a Section 507 review of the Asset Purchase Agreement, I note that the statute requires that notice of a Section 507 review be given to the municipal corporation and the public utility concerned. In this instance two notices are required. With respect to paragraph 38 of the water application and paragraph 37 of the sewer application, PA-American was required to give notice of the Section 507 review of the other contracts identified in Schedule 1.5.1 of the Asset Purchase Agreement. That notice has already been given. My review of the Commission's document folders for each of the applications indicated that PA-American served copies of the applications on all of the municipalities concerned. With respect to a Section 507 review of the Asset Purchase Agreement I find there has been no notice. However, that issue will become moot when I will join both the City and the CCA as indispensable parties below.

B. INDISPENSABLE PARTIES

During the May 17, 2000 prehearing conference in this case, the majority of the parties opposing these applications raised the contractual issue of the City's exemption from payment for service to public fire hydrants in perpetuity. PA-American argued that the issue would more properly addressed in its next rate case. I ruled that the application proceeding for the transfer of the water assets included the Asset Purchase Agreement which made the terms of the Agreement relevant to the case. Tr. 33-34.

Thereafter, the Office of Consumer Advocate raised the issue of litigating the City's entitlement to an exemption from payment for service to public fire hydrants without the participation of the City in the hearing process. The

following discussion blurred the distinction between the need to join the City and the jurisdiction of this Commission over the CCA. Tr. 58-66.

After the prehearing conference, I reviewed the Asset Purchase Agreement (Exhibit B to the application) and note the following two provisions:

(b) **Municipal Service Credit.** PAWC shall provide the City a one-time Ten Thousand Dollar (\$10,000) credit for future water service.

The City shall not, at any time, be required to pay charges for public fire hydrants.

Agreement, ¶3.4 (b) at 18. (Bolding in the original. Underlining added.)

The Parties agree and acknowledge that the City (a) is a donee third-party beneficiary under this Agreement; and, (b) has the same rights and remedies as CCA to enforce this Agreement against, or compel performance by, PAWC.

Nothing herein expressed or implied is intended or should be construed to confer upon or give to any person (other than the Parties and the City) any rights or remedies under or by reason of this Agreement.

Agreement ¶ 8.15 at 33. (Emphasis added.)

I hasten to add that I agree with paragraph 8.15. More specifically, the terms of paragraph 3.4 grant a very important third-party benefit to the City. Indeed, the benefit conferred is one of the exact issues raised by the parties.

In addition, I reviewed Section 507 and Section 102 of the Public Utility Code. 66 Pa. C.S. §§102 and 507. Section 507 specifies that it applies to a “municipal

corporation.” Section 102 defines a “municipal corporation” as including “[a]ll cities . . . and . . . any public . . . authority . . .” *Id.* Accordingly, I find the scope of Section 507 to large enough to include both the CCA and the City within the Commission’s jurisdiction.

Given that I have already concluded that the non-negotiable provisions of the contract are primary issues in this case, it follows that any decision on the validity of these provisions will impact the CCA which is the contractual transferor of the assets, as well as the City which is the designated third-party beneficiary. Under these circumstances, I find the subject of the litigation offers the serious potential to impact the rights of the contractual parties and have concluded that the CCA and the City are indispensable parties.

I will direct the Secretary to serve the CCA and the City with this order which joins them as parties.² I will include in the ordering paragraphs specific notice of the application of Section 507 (and any other relevant provision) of the Public Utility Code in this proceeding. I will also modify the testimony service deadlines below to give the CCA and the City the opportunity to submit prepared testimony and participate in discovery.

C. LITIGATION SCHEDULE

At the May 17 prehearing conference the parties agreed to a litigation schedule which included, among other things, specific dates for the service of prepared written testimony. More specifically, PA-American was required to serve its direct

² Even though the transcript reflects the fact that the CCA and the City were represented by the same law firm as PA-American, I will direct that copies of this order be sent to the actual addresses for the CCA and the City. Tr. 63-66.

testimony on June 7, 2000, and did so. The other parties were required to serve their direct testimony on July 7, 2000, and did so. The Company rebuttal testimony is due to be served on July 28, 2000.

The question becomes how to integrate the joinder of the CCA and the City into the litigation schedule. The obvious answer is to do so as quickly as possible. Accordingly, I will serve this order on all active parties by telecopier, as well as by regular mail. Each active party (*i.e.* PA-American, PSW, Campos, OSBA, OCA and OTS) will have two days from receipt of the telecopy to serve a copy of all of their testimony (direct and rebuttal) on the CCA and the City. I will modify the schedule to allow the CCA and the City to serve their written, direct testimony on all parties and me on or before August 11, 2000 before 4:00 p.m. in hand. In the event the CCA and/or the City do not wish to submit testimony or wish to adopt the PA-American position, they should notify the parties by letter on the same date. Any party wishing to respond to the CCA and/or the City testimony only should serve their written, direct testimony on all parties and me on or before August 21, 2000 before 4:00 p.m. in hand. Further, I will extend the discovery completion date for issues raised by the CCA and the City only to September 5, 2000. The parties should use the following addresses (which I have taken from Asset Purchase Agreement ¶8.8 at 30-31) for service on the CCA and the City:

CCA:

Wayne G. Reed, Executive Director
City of Coatesville Authority
114 East Lincoln Highway
P.O. Box 791
Coatesville, PA 19320

Helen J. Esbenshade, Esquire
Conrad, O'Brien, Gellmen & Rohn, P.C.
17 West Gay Street, Suite 100
West Chester, PA 19380-3090

City:

Paul G. Janssen, Jr., City Manager
City of Coatesville
One City Hall Place
Coatesville, PA 19320

John S. Carnes, Esquire
202 N. Church Street
P.O. Box 3449
West Chester, PA 19381-3449

The remainder of the litigation schedule shall remain in place. The hearing is scheduled to be held in Harrisburg on September 6 and 7, 2000. (A copy of the notice of hearing will be included with this order.) Main briefs will be filed on September 27, 2000. Reply briefs will be filed on October 6, 2000. As with the prepared testimony, the briefs should be served on me and all parties on the designated date on or before 4:00 p.m. in hand.

D. CALN TOWNSHIP INTERVENTION

By letter dated May 31, 2000, the Commission received a Petition To Intervene Filed On Behalf Of Caln Township. The petition alleged that Caln Township received water and sewage services from the CCA and that Caln Township would be impacted by the applications. On June 22, 2000, the undersigned received the Answer Of Pennsylvania-American Water Company To The Petition For Intervention Of Caln Township. The PA-American answer alleged that the Caln Township petition was tardy, that Caln Township lacked standing to participate in the water application docket, and that Caln Township failed to state a claim in the sewer application docket.

I agree that Caln Township's petition is tardy and that it lacks standing in the water application. However, I find that the sewer application presents sufficient information to identify Caln Township's interest at that docket. I note that the sewer application specifically requested a Section 507 review of listed contractual

obligations. Sewer Application ¶37 at 12. The contracts mentioned in Caln Township's petition are listed in Asset Purchase Agreement. Agreement ¶1.5 at 4 and Schedule 1.5.1. Accordingly, I conclude that the application and Caln Township have identified an interest which may be directly affected by the sewer application proceedings only. 52 Pa. Code §5.72(a)(2). I will grant Caln Township's petition to intervene insofar as it relates to the sewer application and subject to the conditions below.

As noted above, Caln Township's petition is tardy. My review of the Commission's document folders reveals that Caln Township was served with both applications by letter dated March 17, 2000, that Caln Township was served with notice by publication on March 20 and 27, 2000 (which specified the April 3, 2000, protest/intervention deadline) and that Caln Township was served by letter dated March 31, 2000, and informed the deadline had been extended to April 7, 2000. In addition, a representative of Caln Township attended the May 17 prehearing conference and inquired of me about the possibility of intervention. At this point, had I not added the CCA and the City as parties in this order, the chances of Caln Township joining this case would have been nil.

I considered allowing Caln Township to serve testimony on the same schedule outlined above for the CCA and the City. However, Caln Township had the notice and opportunity to be a timely participant in this case. PA-American pointed out that it would have had an opportunity to discover Caln Township's position, if Caln Township had begun in a timely manner. I agree. I note that Caln Township alleged that it would agree to comply with the scheduling orders. I also note that its representative attended the May 17 prehearing conference. Consequently, Caln Township was aware of the due dates for serving testimony. Caln Township could have submitted its petition to intervene soon enough to allow an answer and to allow

compliance with the due dates. It did not. Those dates have passed. There is no reason to permit Caln Township to prepare testimony at this late date. I will require the parties who served testimony to send copies to Caln Township within two days of receiving this order. The attorneys for Caln Township are listed below:

Ronald C. Nagle, Esquire
Kristin C. Camp, Esquire
Buckley, Nagle, Gentry, Brion, McGuire and Morris, LLP
304 North High Street
West Chester, PA 19380-2688

Further, I will permit Caln Township to participate (*i.e.* to initiate and to respond to) in discovery as set forth at the prehearing conference (*i.e.* discovery should end around August 18) and to participate in the limited exception for discovery set forth above for the CCA and the City. Finally, Caln Township will be permitted to cross-examine witnesses, submit briefs and file exceptions in accordance with existing schedule. 52 Pa. Code §5.75(b).

E. SADSBURY TOWNSHIP'S WITHDRAWAL

By letter dated May 16, 2000, Sadsbury Township filed a Notice Of Withdrawal Of Protest Of Sadsbury Township, Chester County. No party has opposed the requested withdrawal. The request will be granted below. However, because the issue of the application of a Section 507 review developed at the prehearing conference which was after the request was filed, Sadsbury Township may wish to reconsider its position. Accordingly, Sadsbury Township will be given ten days from receipt of this order in which to re-enter its appearance and accept the same conditions as Caln Township above. If it does decide to re-appear, Sadsbury Township must notify me and the other parties to schedule the receipt of the testimony and continue its participation.

ORDER

NOW THEREFORE, IT IS ORDERED:

1. That the Asset Purchase Agreement which is the basis for the water and sewer applications of Pennsylvania-American Water Company at Docket Nos. A-212285F0071 and A-230073F0002 shall be subject to review by the Commission in accordance with Sections 507 and 508 of the Public Utility Code.
2. That the City of Coatesville Authority is hereby joined as an indispensable party and notified that its rights and obligations under the Asset Purchase Agreement between the Authority and the Pennsylvania-American Water Company shall be subject to review and possible modification by the Pennsylvania Public Utility Commission pursuant to Sections 507 and 508 (and any other relevant provisions) of the Public Utility Code.
3. That, as soon as possible, the City of Coatesville Authority shall be served by the Secretary with a copy of this order with attachments at the following addresses:

Wayne G. Reed, Executive Director City of Coatesville Authority 114 East Lincoln Highway P.O. Box 791 Coatesville, PA 19320	Helen J. Esbenshade, Esquire Conrad, O'Brien, Gellmen & Rohn, P.C. 17 West Gay Street, Suite 100 West Chester, PA 19380-3090
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4. That the City of Coatesville is hereby joined as an indispensable party and notified that its rights and obligations as a third-party beneficiary under the Asset Purchase Agreement between the City of Coatesville Authority and the

Pennsylvania-American Water Company shall be subject to review and possible modification by the Pennsylvania Public Utility Commission pursuant to Sections 507 and 508 (and any other relevant provisions) of the Public Utility Code.

5. That, as soon as possible, the City of Coatesville shall be served by the Secretary with a copy of this order with attachments at the following addresses.

Paul G. Janssen, Jr., City Manager
City of Coatesville
One City Hall Place
Coatesville, PA 19320

John S. Carnes, Esquire
202 N. Church Street
P.O. Box 3449
West Chester, PA 19381-3449

6. That within two days of receiving this order by telecopier, the Pennsylvania-American Water Company, the Philadelphia Suburban Water Company, Ernest E. Campos, Sr., the Office of Trial Staff and the Office of Consumer Advocate shall serve copies of their previously served testimony on the representatives of the City of Coatesville Authority and the City of Coatesville, listed above.

7. That the City of Coatesville Authority and the City of Coatesville shall serve their written, direct testimony on all parties and me on or before August 11, 2000 before 4:00 p.m. in hand. In the event, the City of Coatesville Authority and/or the City of Coatesville do not wish to submit testimony or wish to adopt the PA-American position, they should notify the parties by letter on the same date. Any party wishing to respond to the City of Coatesville Authority and/or the City of Coatesville testimony only should serve their written, direct testimony on all parties and me on or before August 21, 2000 before 4:00 p.m. in hand. Further, the discovery completion date for issues raised by the City of Coatesville Authority and the City of Coatesville only is hereby extended to September 5, 2000.

8. That the parties shall be prepared to litigate these applications in accordance with the following schedule: The hearing is scheduled to be held in Harrisburg on September 6 and 7, 2000. (A copy of the notice of hearing will be included with this order). Main briefs will be filed on September 27, 2000. Reply briefs will be filed on October 6, 2000. As with the prepared testimony, the briefs should be served on me and all parties on the designated date on or before 4:00 p.m. in hand.

9. That the Petition To Intervene Filed On Behalf Of Caln Township is hereby granted insofar as it relates to the sewer application at Docket No. A-230073F0002 and subject to the conditions listed above.

10. That the Notice Of Withdrawal Of Protest Of Sadsbury Township, Chester County is hereby granted subject to the conditions listed above.


11. That the Philadelphia Suburban Water Company's Motion To Strike Or, In the Alternative, For Leave To File A Reply To The Addendum To The Memorandum Of Law Of Pennsylvania-American Water Company is denied in part and granted in part as follows.

a. The Motion To Strike is hereby denied.

b. The request For Leave To File A Reply To The Addendum To The Memorandum Of Law Of Pennsylvania-American Water Company is hereby granted, and the attached Reply Of Philadelphia Suburban Water Company To The "Addendum" To PAWC's Memorandum Of Law is hereby received into the record.

12. That the water and sewer applications of Pennsylvania-American Water Company at Docket Nos. A-212285F0071 and A-230073F0002 are hereby consolidated for hearing and decisional purposes.

DATED: July 26, 2000



LOUIS G. COCHERES
Administrative Law Judge