



July 8, 2016

VIA E-FILE AND FIRST CLASS MAIL

D. Troy Sellars

Direct Phone 717-703-5890

Direct Fax 215-701-2416

tsellars@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: In re: Application of Pennsylvania-American Water Company for Approval of (1) the transfer, by sale, of substantially all of the Borough of New Cumberland's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania, and (3) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County Pennsylvania; Docket No. A-2016-2544151

PENNSYLVANIA-AMERICAN WATER COMPANY'S PREHEARING MEMORANDUM

Dear Secretary Chiavetta:

Enclosed for filing with the Commission, please find Pennsylvania-American Water Company's Prehearing Memorandum in the above-referenced proceeding. Copies have been served per the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: D. Troy Sellars

Counsel for *Pennsylvania-American Water Company*

DTS/kmg

Enclosure

cc: Honorable Elizabeth H. Barnes
Honorable Steven K. Haas
Per Certificate of Service

LEGAL\27408193\1

CERTIFICATE OF SERVICE

**In re: Application of Pennsylvania-American Water Company for Approval of (1) the transfer, by sale, of substantially all of the Borough of New Cumberland's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania, and (3) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County Pennsylvania;
Docket No. A-2016-2544151**

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 ELECTRONIC AND FIRST CLASS MAIL:

Christine M. Hoover, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
choover@paoca.org
egannon@paoca.org

Susan Simms Marsh, Esquire
Melanie J. Elatieh, Esquire
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Susan.marsh@amwater.com
Melanie.elatieh@amwater.com

DATED: July 8, 2016



D. Troy Sellars, Esquire
Counsel for *Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judges Elizabeth H. Barnes
and Steven K. Haas

In re: Application of Pennsylvania-American Water :
Company for Approval of (1) the transfer, by sale, of :
substantially all of the Borough of New Cumberland’s :
assets, properties and rights related to its wastewater :
collection and treatment system to Pennsylvania-American :
Water Company, (2) the rights of Pennsylvania-American :
Water Company to begin to offer or furnish wastewater : Docket No. A-2016-2544151
service to the public in the Borough of New Cumberland, :
Cumberland County, Pennsylvania, and (3) the right of :
Pennsylvania-American Water Company to begin to offer :
or furnish wastewater service to three residential customers :
in Lower Allen Township, Cumberland County, :
Pennsylvania. :

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

Pennsylvania-American Water Company (“PAWC”), by and through counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order of the Honorable Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas (“ALJs”), dated June 30, 2016, hereby file this Prehearing Memorandum in the above-captioned matter, and state as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

On May 6, 2016, PAWC filed the above-referenced application (“Application”) requesting that the Pennsylvania Public Utility Commission (“Commission”): (i) approve the transfer, by sale, of substantially all of the Borough of New Cumberland, Cumberland County, Pennsylvania’s (“New Cumberland”) assets, properties and rights related to its wastewater collection and treatment system to PAWC, (ii) approve the rights of PAWC to begin to offer or furnish wastewater service to the public in New Cumberland; (iii) approve the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania; (iv) allow the rates and the rules and regulations of service as set forth in the *pro forma* tariff supplement attached to the Application as **Revised Exhibit J** to become effective upon one day’s notice within ten (10) days following the closing of the Transaction;¹ and, (v) issue any other approval or certificate appropriate, customary, or necessary under the Pennsylvania Public Utility Code (“Code”) to carry out the Transaction in a lawful manner.

The Application was served on the required entities and the Commission-directed notice of the Application was published in the May 21, 2016, edition of the *Pennsylvania Bulletin* as well as in *The Patriot News* on May 19, 2016 and May 24, 2016. Proof of the publication in *The Patriot News* was filed with the Commission on June 6, 2016.

¹ On May 16, 2016, PAWC filed Revised Exhibits I and J to the Application. These revised exhibits replaced the original Exhibits I and J.

The Office of Consumer Advocate (“OCA”) filed a protest to the Application on June 6, 2016. No other person has sought to intervene or has filed a protest in this matter and the June 6, 2016 deadline to protest or intervene has now passed. *See* 46 Pa.B. 2649.

A Prehearing Conference is scheduled for July 12, 2016 at 10:00 a.m., in Hearing Room 2, before the ALJs. This Prehearing Conference Memorandum is filed in anticipation of that Prehearing Conference.

II. COUNSEL

Counsel for PAWC are:

David P. Zambito, Esquire (PA ID No. 80017)
D. Troy Sellars, Esquire (PA ID No. 210302)
Cozen O’Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Phone: 717-703-5892
Fax: 215-989-4216
E-mail: dzambito@cozen.com
tsellars@cozen.com

Susan Simms Marsh, Esquire (PA ID No. 44689)
Melanie J. El Atieh, Esquire (PA ID No. 209323)
Corporate Counsel
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Phone: 717-531-3208
Fax: 717-531-3399
E-mail: susan.marsh@amwater.com
melanie.elatieh@amwater.com

III. SERVICE OF DOCUMENTS

PAWC’s attorneys are authorized to accept service on behalf of PAWC in this proceeding. PAWC requests that hard copies of documents be served on Attorney Zambito 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. **PAWC's Technical, Financial, and Legal Fitness to Acquire and Operate the New Cumberland Wastewater System**

The primary issues in this matter are whether PAWC is technically, financially, and legally fit to acquire and operate New Cumberland's wastewater collection and treatment system and whether the Transaction will promote a substantial public interest. PAWC's fitness is presumed by law given its status as a currently certificated public utility. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Despite this presumption, PAWC will present substantial record evidence to support a finding that PAWC is technically, financially, and legally fit to acquire and operate the wastewater assets of New Cumberland in the public interest.

B. **Promotion of Substantial Public Interest**

To approve the Transaction, the Commission must affirmatively find, by a preponderance of the evidence, that it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *See Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007). PAWC will establish through substantial record evidence that the Transaction provides a substantial benefit to the general public, including the current New Cumberland wastewater customers,² and -- by growing PAWC's customer base -- to PAWC's existing and future customers.

² As referenced in the Application, New Cumberland's wastewater customers include three residences in Lower Allen Township, Cumberland County, Pennsylvania.

C. **Approval of Initial Tariff Supplement / Reasonable Phase-In of Rates**

PAWC also requests that the *pro forma* tariff supplement attached as **Revised Exhibit J** to the Application be allowed to become effective upon one day's notice within ten (10) days following the closing of the Transaction. PAWC has agreed to adopt New Cumberland's rates existing at the time of the closing of the Transaction; however, PAWC intends to bill on a monthly basis rather than New Cumberland's current quarterly billing cycle. Additionally, PAWC's non-customer and non-consumption charges, as well as PAWC's other tariffed rules and regulations, will be adopted immediately upon closing.

V. **WITNESSES AND EVIDENCE**

PAWC has not yet determined what witnesses it will call in this matter. PAWC will timely inform the ALJs and OCA when a decision on this matter is reached.

VI. **DISCOVERY**

As there is no statutory deadline for disposition of this matter, PAWC proposes that the parties abide by the Commission's standard Rules of Practice and Procedure without modification. PAWC will work in good faith with OCA to resolve any discovery disputes that may arise during the course of this proceeding.

It is noteworthy that on June 3, 2016, PAWC responded to Data Requests from the Bureau of Technical Utility Services. Further, on June 30, 2016, PAWC responded to discovery requests made by OCA on June 21, 2016.

VII. PROTECTIVE ORDER

There does not currently appear to be a need for a protective order in this matter. However, should that change, PAWC will work with OCA to determine whether a consensus can be reached as to a motion for protective order.

VIII. PROCEDURAL SCHEDULE

PAWC proposes the following procedural schedule for this matter:

Submission of Written Direct Testimony of PAWC:	July 22, 2016
Submission of Written Direct Testimony of OCA:	August 12, 2016
Submission of Written Rebuttal Testimony of PAWC:	August 22, 2016
Submission of Written Surrebuttal Testimony of OCA:	August 29, 2016
Hearing with Oral Rejoinder:	September 13, 2016
Main Briefs from all parties:	October 3, 2016
Reply Briefs from all parties:	October 13 2016

PAWC is currently discussing the procedural schedule with OCA in an effort to reach a schedule that is acceptable to both parties and the Presiding Officers.

IX. SETTLEMENT DISCUSSIONS

PAWC is willing to engage in settlement discussions with OCA.

Respectfully submitted,



David P. Zambito, Esquire (PA ID No. 80017)
D. Troy Sellars, Esquire (PA ID No. 210302)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101-1236
Phone: 717-703-5892
Fax: 215-989-4216
E-mail: dzambito@cozen.com
tsellars@cozen.com

Susan Simms Marsh, Esquire (PA ID No. 44689)
Melanie J. El Atieh, Esquire (PA ID No. 209323)
Corporate Counsel
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Phone: 717-531-3208
Fax: 717-531-3399
E-mail: susan.marsh@amwater.com
melanie.elatieh@amwater.com

Attorneys for Pennsylvania-American Water Company

Date: July 8, 2016