



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

IN REPLY PLEASE
REFER TO OUR FILE

July 20, 2018

Via E-Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Pennsylvania-American Water Company-Wastewater, pursuant to the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), and 66 Pa. C.S. § 1329 for approval of (1) the transfer, by sale, of substantially all of the Township of Sadsbury's assets, properties and rights related to its wastewater collection system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in a portion of the Township of Sadsbury, Chester County, Pennsylvania
Docket No. A-2018-3002437

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Prehearing Memorandum** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313863

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #320526

Enclosure
GLM/ELM/snc

cc: ALJ Darlene D. Heep
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	
Water Company-Wastewater, pursuant to the	:	
Pennsylvania Public Utility Code, 66 Pa.	:	Docket No. A-2018-3002437
C.S. § 1102(a), and 66 Pa. C.S. § 1329 for	:	
approval of (1) the transfer, by sale, of	:	
substantially all of the Township of	:	
Sadsbury's assets, properties and rights	:	
related to its wastewater collection system to	:	
Pennsylvania-American Water Company,	:	
and (2) the rights of Pennsylvania-American	:	
Water Company to begin to offer or furnish	:	
wastewater service to the public in a portion	:	
of the Township of Sadsbury, Chester	:	
County, Pennsylvania	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated July 20, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via Electronic and First-Class Mail

David P Zambito, Esquire
Cozen O' Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

John R. Evans
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Christine M. Hoover, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Thomas M. O'Keefe, Esquire
Lamb McErlane PC
24 East Market Street
P.O. Box 565
West Chester, PA 19381-0565



Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313863

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #320526

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	
Water Company-Wastewater, pursuant	:	
to the Pennsylvania Public Utility Code,	:	
66 Pa. C.S. § 1102(a), and 66 Pa. C.S. §	:	
1329 for approval of (1) the transfer, by	:	
sale, of substantially all of the Township	:	Docket No. A-2018-3002437
of Sadsbury’s assets, properties and	:	
rights related to its wastewater collection	:	
system to Pennsylvania-American Water	:	
Company, and (2) the rights of	:	
Pennsylvania-American Water Company	:	
to begin to offer or furnish wastewater	:	
service to the public in a portion of the	:	
Township of Sadsbury, Chester County,	:	
Pennsylvania	:	

**PREHEARING MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE DARLENE D. HEEP:

In accordance with the Prehearing Conference Order dated June 27, 2018, the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Memorandum. The I&E prosecutors assigned to this proceeding are Gina L. Miller and Erika L. McLain. Ms. Miller and Ms. McLain may be contacted as follows:

By Mail: Gina L. Miller
Erika L. McLain
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

By e-mail: ginmiller@pa.gov
ermclain@pa.gov

Telephone: (717) 787-8754
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I. BACKGROUND

By Secretarial Letter dated June 19, 2018, the Commission acknowledged receipt of the Application of Pennsylvania-American Water Company, Inc. (“PAWC” or “Company”) for approval of, inter alia,: 1) the acquisition of the wastewater system assets of the Township of Sadsbury (“Sadsbury”) situated within Chester County, Pennsylvania, 2) the right of PAWC to begin to offer, render, furnish and supply wastewater service to the public in Sadsbury’s service territory, and 3) for an order approving the acquisition that includes the ratemaking rate base of Sadsbury’s wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code.

On June 20, 2018, I&E filed its Notice of Appearance and the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement in this proceeding. On June 29, 2018, Sadsbury filed a Petitions to Intervene.

A Prehearing Conference is now scheduled for Wednesday, July 25, 2018, at 2:00 p.m., before Administrative Law Judge Darlene D. Heep. In accordance with the Prehearing Conference Order issued by ALJ Heep on June 27, 2018, I&E now respectfully submits this prehearing memorandum.

II. ISSUES

Based upon a preliminary review of the filing, I&E has identified the following area of inquiry, representing a listing of potential issues at this time.

However, I&E reserves the right to address such other issues when those issues arise:

1. Whether the transaction is in the public interest under 66 Pa. C.S. § 1102 of the Public Utility Code.
2. Evaluation of PAWC's claimed rate base
3. Errors and omissions in the Fair Market Appraisals offered in support of PAWC's Application
4. The timing of each of the Fair Market Value Appraisals offered in support of PAWC's Application
5. Ratemaking issues implicated by the acquisition
6. Benefits and detriments of the acquisition

Most of the issues raised by I&E will be supported by the Direct Testimony of I&E witnesses. If there are issues of Commission policy or legal interpretation that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony, I&E reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed in Brief.

III. WITNESSES

It is currently expected that I&E may call one or both the following witnesses, depending upon their availability and the development of issues, without being limited thereto:

Joseph Kubas
Ethan H. Cline

Fixed Utility Valuation Engineer
Fixed Utility Valuation Engineer

The I&E witnesses may be contacted through the contact information listed above for Ms. Miller and Ms. McLain. I&E reserves the right to substitute witnesses or call additional witnesses if warranted.¹ All active parties will be notified of any amendments to the I&E witness list.

IV. SCHEDULE

The parties proposed the following procedural schedule, which ALJ Heep approved via electronic correspondence dated July 11, 2018:

Non-Company Direct	July 27, 2018
Rebuttal	August 8, 2018
Surrebuttal	August 17, 2018
Outline of Oral Rejoinder	August 20, 2018
Hearings ²	August 22-23, 2018
Main Briefs	September 6, 2018
Reply Briefs	September 14, 2018

V. PUBLIC INPUT HEARINGS

To the extent that public input hearings are deemed necessary in this proceeding, I&E advocates for the use of Smart Hearings where possible.

VI. DISCOVERY

¹ The above listing is provided without analysis of the positions of all parties to this proceeding and without the benefit of completed discovery. Consistent with Section 3.1(c) of the Commission's Office of Administrative Law Judge Operating Procedures Manual (Scheduling/Assignment Procedures), I&E requests that the hearings be held in Harrisburg.

On or about July 11, 2018, I&E, PAWC, the OCA, and Sadsbury entered into a Stipulation Regarding Discovery Rule Modifications. The Stipulation memorializes these parties' agreement to shorten certain discovery deadlines as follows:

1. Answers to written interrogatories shall be served in-hand within five (5) calendar days of service.
2. Objections to interrogatories shall be communicated orally within two (2) calendar days and in writing within three (3) calendar days of service of the interrogatories.
3. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of the written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of such motions.
5. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within five (5) calendar days.
6. Requests for admissions will be deemed admitted unless answered or denied within three (3) calendar days of service.
7. Discovery and all discovery-related pleadings, such as objections, motions, or answers, served after 12:00 noon on a Friday or after 12:00 noon the day before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.
8. The parties are directed to make every reasonable effort to comply with the discovery response times set forth in this agreement. In those instances when compliance is not possible, despite a party's best efforts, the responding party shall so advise and the parties shall work together to address the requests and responses on a timely basis.

9. These discovery rule modifications are for the limited purpose of this proceeding and should not be viewed as binding, or otherwise limiting, upon positions taken by the parties in any other proceeding.

Accordingly, the parties have committed to honoring the above terms, and I&E opines that no further modifications are necessary.

VII. PRESERVATION OF CERTAIN ISSUES, OBJECTIONS, AND ARGUMENTS

On July 10, 2018, I&E, PAWC, the OCA, and Sadsbury entered into a Stipulation Regarding Objections and Preservation of Issues, which was filed to the docket of this proceeding. The Stipulation memorializes the fact that parties to this proceeding have competing views regarding the proper scope of Section 1329 proceedings, including the scope of discovery and the scope and standard of the Commission's review. In conjunction with each party's respective view,³ the parties have stipulated that the issues, objections, and arguments raised in their respective briefings in the *Aqua Application Proceeding* and *Aqua Application Appeal* shall be treated as though the Parties have raised and preserved any and all such issues, objections, and arguments in this proceeding. I&E believes that these terms will facilitate a more orderly, streamlined, and efficient proceeding for this case.

³ These views are encompassed within *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township*, Docket No. A-2016-2580061 (the "*Aqua Application Proceeding*") and on appeal before the Commonwealth Court in *McCloskey v. Pa. Pub. Util. Comm'n*, No. 1624 C.D. 2017 ("*Aqua Application Appeal*").

VIII. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties to reach a resolution of any or all issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "GLM", is positioned above the typed name of Gina L. Miller.

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Dated: July 20, 2018