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March 9, 2020

Via Electronic Filing

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

Re: Application of Pennsylvania-American Water Company, Pursuant to the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1102(a) and 1329, et al.; Docket No. A-2019-3014248

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Borough of Kane Authority's Prehearing Memorandum with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Carl R. Shultz

CRS/jls
Enclosure

cc: Hon. Joel Cheskis (w/enc)
Certificate of Service (w/enc)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---------------------------|
| Application of Pennsylvania-American | : | |
| Water Company, Pursuant to the | : | Docket No. A-2019-3014248 |
| Pennsylvania Public Utility Code, 66 | : | |
| Pa.C.S. § 1102(a) and 1329, For Approval | : | |
| of 1) the Transfer, by Sale, of | : | |
| Substantially all of the Borough of Kane | : | |
| Authority'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 Kane, and in a portion of | : | |
| Wetmore Township, McKean County, | : | |
| Pennsylvania; and 3) for Approval of the | : | |
| use for Ratemaking Purposes of the Lesser | : | |
| Fair Market Value or the Negotiated | : | |
| Purchase Price of the Borough of Kane | : | |
| Authority's Assets Related to its | : | |
| Wastewater Collection and Treatment | : | |
| System | : | |

**PREHEARING MEMORANDUM
OF THE BOROUGH OF KANE AUTHORITY**

Pursuant to 52 Pa Code § 5.223 and the Prehearing Conference Order dated February 7, 2020,¹ the Borough of Kane Authority (“Authority” or “Seller”) submits this Prehearing Memorandum in advance of the **In-Person** Prehearing Conference scheduled for **Wednesday, March 11, 2020 at 1:00 PM** in this proceeding.

I. BACKGROUND

This proceeding concerns the Application of Pennsylvania-American Water Company “PAWC” or “Company” or “Buyer”) filed with the Pennsylvania Public Utility Commission

¹ <http://www.puc.state.pa.us/pdocs/1654219.docx>.

(“Commission” or “PUC”) for approval of its acquisition of the wastewater system assets of the Authority pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), 66 Pa.C.S. §§ 1102, 1329.

By Secretarial Letter dated December 11, 2019,² the Commission, *inter alia*, conditionally accepted the Application. By Secretarial Letter dated February 6, 2020,³ the Commission, *inter alia*, accepted the Application for filing. Notice of the Application appeared in the February 22, 2020 edition of the *Pennsylvania Bulletin*⁴ with a protest deadline of March 9, 2020.⁵

Administrative Law Judge Joel H. Cheskis (“ALJ Cheskis”) was assigned to preside over this proceeding. Borough of Kane Authority (“Authority” or “Seller”) submitted a Petition to Intervene in this proceeding,⁶ and is submitting this prehearing memorandum consistent with the Prehearing Conference Order dated February 7, 2020.⁷ An initial prehearing conference was noticed for Wednesday, March 11, 2020.⁸

II. LIST OF ISSUES AND THE AUTHORITY’S POSITIONS

The acquisition of the Authority’s assets by PAWC requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.⁹ Before the Commission may issue a certificate of public convenience it must find that the granting of such

² <http://www.puc.state.pa.us/pcdocs/1647186.docx>.

³ <http://www.puc.state.pa.us/pcdocs/1653620.docx>.

⁴ 50 *Pa.Bull* 1099, 1229 (February 22, 2020), which is available at:

<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-8/282.html>.

⁵ See Secretarial Letter dated indicating that a protest period end date of March 9, 2020 should be used to meet all customer noticing requirements for the Application. <http://www.puc.state.pa.us/pcdocs/1651841.docx>

⁶ <http://www.puc.state.pa.us/pcdocs/1654889.pdf>.

⁷ <http://www.puc.state.pa.us/pcdocs/1654219.docx>.

⁸ <http://www.puc.state.pa.us/pcdocs/1653881.docx>. See also 50 *Pa.Bull* 1099, 1230 (February 22, 2020), which is available at: <http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-8/283.html>.

⁹ 66 Pa.C.S. § 1102(a)(3).

certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.¹⁰ In addition, Section 1329 of the Code¹¹ sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation.

It is the Authority's position that the Application filed by PAWC should be granted by the Commission. The Authority submits that the proposed transaction is necessary or proper for the service, accommodation, convenience or safety of the public. The Authority also agreed to the use of the Section 1329 process and believes that PAWC has complied with all of the requirements of Section 1329.

III. SERVICE OF DOCUMENTS

The Authority requests that all documents be served on:

Carl R. Shultz, Esq.
Sarah C. Stoner, Esq.

Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101

Phone: (717) 237-3742
Fax: (717) 237-6019

The Authority also agrees to receive service of documents electronically in this proceeding. To the extent that materials are available electronically, it is requested that copies be served upon:

| | |
|----------------|--|
| Carl R. Shultz | cshultz@eckertseamans.com |
|----------------|--|

¹⁰ 66 Pa.C.S. § 1103(a). *See also City of York v. PUC*, 295 A.2d 825, 828 (Pa. 1972); *Middletown Twp. v. PUC*, 482 A.2d 674 (Pa.Cmwlth. 1984).

¹¹ 66 Pa.C.S. § 1329.

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|-----------------|--|
| Sarah C. Stoner | sstoner@eckertseamans.com |
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IV. PROCEDURAL SCHEDULE

The Authority agrees with the proposed procedural schedule for this proceeding. That being said, the Authority will cooperate with ALJ Cheskis and the parties to arrive at a mutually acceptable litigation schedule. Counsel for the Authority has signed the agreed-upon Stipulation regarding discovery rule modifications in this proceeding.¹²

V. WITNESSES

Seller Testimony consists of the direct testimony of (1) Donald E. Payne on behalf of the Authority (“BKA Statement No. 1”) and (2) Harold Walker III, Manager Financial Studies, for Gannett Fleming Valuation and Rate on behalf of the Authority (“BKA Statement No. 2”). Both Statements were filed with the Application.¹³ The Authority does not presently anticipate calling any other witnesses. However, the Authority reserves its right to call other witnesses, if necessary, and agrees to notify ALJ Cheskis and the other parties should the Authority determine that any other witnesses will be called by the Authority.

VI. SETTLEMENT

The Authority is willing to participate in settlement discussions regarding all or part of this proceeding.

[Signature appears on next page]

¹² <http://www.puc.state.pa.us/pcdocs/1656560.pdf>.
¹³ <http://www.puc.state.pa.us/pcdocs/1645870.pdf>.

Respectfully submitted,



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Date: March 9, 2020

Attorneys for
The Borough of Kane Authority

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Prehearing Memorandum** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and First Class Mail

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Date: March 9, 2020



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