



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

June 21, 2021

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company Pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Valley Township  
Docket No.: A-2020-3020178  
**I&E Prehearing Memorandum**

Dear Secretary Chiavetta:

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

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

Erika L. McLain  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 320526  
(717) 783-6170  
[ermclain@pa.gov](mailto:ermclain@pa.gov)

ELM/ac  
Enclosures

cc: Honorable Conrad A. Johnson, Office of Administrative Law Judge (*via email*)  
Honorable Emily I. DeVoe, Office of Administrative Law Judge (*via email*)  
Nicholas Miskanic, Legal Assistant, Office of Administrative Law Judge (*via email*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American :  
Water Company Pursuant to Sections :  
1102, 1329 and 507 of the Public Utility : Docket No.: A-2020-3020178  
Code for Approval of its Acquisition of :  
the Wastewater System Assets of Valley :  
Township :

---

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

---

**TO ADMINISTRATIVE LAW JUDGES CONRAD A. JOHNSON AND EMILY I.**

**DEVOE:**

In accordance with the Prehearing Conference Order dated May 18, 2021, the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Memorandum. The I&E prosecutor assigned to this proceeding is Erika L. McLain. Ms. McLain may be contacted as follows:

By Mail<sup>1</sup>: Erika L. McLain  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Fl.  
Harrisburg, PA 17120

By E-mail: [ermclain@pa.gov](mailto:ermclain@pa.gov)

Telephone: (717) 783-6170

---

<sup>1</sup> As a result of the COVID-19 pandemic, Commission physical offices are currently closed. While Commission offices are closed, Ms. McLain should be contacted by e-mail first.

## **I. BACKGROUND**

On October 9, 2020, Pennsylvania-American Water Company (“PAWC” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) its Application pursuant to Sections 1102, 1329, and 507 of the Public Utility Code (“Code”), for (1) approval of the acquisition by PAWC of the wastewater system assets of Valley Township (“Valley”) situated within Chester County, Pennsylvania; (2) approval of the right of PAWC to begin to offer, render, furnish and supply wastewater service to the public in the areas served by the Valley wastewater system, including Valley and in a portion of East Fallowfield Township, Sadsbury Township, and West Caln Township, Chester County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Valley wastewater system assets pursuant to Section 1329(c)(2) of the Code and request for Approval of Contracts; and (4) approval of the Asset Purchase Agreement, between PAWC and Valley, pursuant to Section 507 of the Code.

By Secretarial Letter dated March 19, 2021, the Commission indicated that the Application would be accepted for filing only on a conditional basis. The Secretarial Letter, among other things, directed PAWC to ensure notice be provided to all current Valley Township wastewater customers.

On November 5, 2020, I&E filed its Notice of Appearance in this case. On December 23, 2020, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement and on January 5, 2021, the Office of the Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement. On May 11, 2021,

PAWC served the Commission's Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of March 19, 2021; therefore, PAWC requested that its Application be accepted for filing. By way of a Secretarial Letter of May 18, 2021, the Commission informed PAWC that its Application was accepted for filing. On May 21, 2021, Valley Township filed a Petition to Intervene. On May 29, 2021 the Commission published notice of PAWC's Application in the Pennsylvania Bulletin, and it established a protest deadline of June 21, 2021. Thereafter, PAWC's Application was assigned to the Office of Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission's consideration.

A telephonic Prehearing Conference is now scheduled for Wednesday, June 23, 2020, at 10:00 a.m., before ALJ Conrad A. Johnson and ALJ Emily I. Devoe ("ALJs"). In accordance with the Prehearing Conference Order issued by the ALJs on May 18, 2021, I&E now respectfully submits this prehearing memorandum.

## **II. ISSUES**

Based upon a preliminary review of the filing, I&E has identified the following areas 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. Errors and omissions in the Fair Market Appraisal done by Gannett Fleming Valuation and Rate Consultants;
2. Errors and omissions in the Fair Market Appraisal done by AUS Consultants, Inc.;

3. Cost of Service Study;
4. Comparison of Rate Base per Customer;
5. Benefits and detriments of the acquisition;
6. Whether the transaction is in the public interest under 66 Pa. C.S. § 1102 of the Public Utility Code; and
7. Evaluation of PAWC's claimed rate base.

I&E notes that this listing of issues is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway.

Accordingly, I&E necessarily reserves the right to supplement its issue list, to remove issues from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full record in this case. Additionally, 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 the following witnesses without being limited thereto:

- DC Patel, Fixed Utility Financial Analyst
- Ethan H. Cline, Fixed Utility Valuation Engineer

The I&E witnesses may be contacted through the contact information listed above for Ms. McLain. I&E notes that this listing of witnesses is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway. Accordingly, I&E necessarily reserves the right to supplement its witness list, and to remove witnesses from this list, as necessary to facilitate the development of a full record in this case. The ALJs and all active parties will be notified of any amendments to the I&E witness list.

#### **IV. SCHEDULE**

I&E will work with the parties to develop a mutually agreeable litigation schedule.

#### **V. DISCOVERY**

At this time, I&E does not propose any discovery modifications. If the need arises, I&E will work with the parties to develop discovery modifications.

#### **VI. SERVICE OF DOCUMENTS**

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony and briefs during the closure of Commission offices, and consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order,<sup>2</sup> I&E will both only serve and accept electronic delivery of documents. Upon re-opening of Commission offices, and only on a forward-moving basis from that point onward, I&E requests parties

---

<sup>2</sup> Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*.

provide a follow-up hard copy by regular first-class mail in addition to electronic delivery.

## **VII. SETTLEMENT**

I&E intends to participate in any settlement discussions and is willing to work with the parties in an attempt to reach a resolution of any or all issues. I&E notes that PAWC and Valley Township have been very proactive in engaging in settlement discussions with I&E, and those discussions have been productive.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erika L. McLain".

Erika L. McLain  
Prosecutor  
PA Attorney ID No. 320526  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission

Dated: June 21, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American :  
Water Company Pursuant to Sections :  
1102, 1329 and 507 of the Public Utility : Docket No.: A-2020-3020178  
Code for Approval of its Acquisition of :  
the Wastewater System Assets of Valley :  
Township :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated June 21, 2021, in the manner and upon the persons listed below.

**Served via Electronic Mail Only**


David P. Zambito, Esq.  
Jonathan P. Nase, Esq.  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[jnase@cozen.com](mailto:jnase@cozen.com)  
*Counsel for*  
*Pennsylvania-American Water Company*

Thomas Wyatt, Esq.  
Matthew S. Olesh, Esq.  
Obermayer Rebmann Maxwell & Hippell LLP  
Centre Square West  
1500 Market Street, Suite 3400  
Philadelphia, PA 19102  
[thomas.wyatt@obermayer.com](mailto:thomas.wyatt@obermayer.com)  
[matthew.olesh@obermayer.com](mailto:matthew.olesh@obermayer.com)  
*Counsel for Valley Township*

Susan Simms Marsh, Esq.  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
[susan.marsh@amwater.com](mailto:susan.marsh@amwater.com)  
*Counsel for*  
*Pennsylvania-American Water Company*

Christine Maloni Hoover, Esq.  
Erin L. Gannon, Esq.  
Harrison W. Breitman, Esq.  
Office of Consumer Advocate  
Forum Place  
555 Walnut Street, 5th Floor  
Harrisburg, PA 17101-1923  
[choover@paoca.org](mailto:choover@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)  
[hbreitman@paoca.org](mailto:hbreitman@paoca.org)

Erin K. Fure, Esq.  
Office of Small Business Advocate  
Forum Place  
555 Walnut Street, 1st Floor  
Harrisburg, PA 17101  
[efure@pa.gov](mailto:efure@pa.gov)

  
Erika L. McLain  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 320526