



June 21, 2021

**VIA E-FILE**

**David P. Zambito**

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Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17120

**Re: In re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Valley Township's assets, properties and rights related to its water treatment and distribution 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 Valley Township, a portion of West Caln and East Fallowfield Townships, Chester County, Pennsylvania; Docket Nos. A-2020-3019859 *et al.***

**In re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Valley Township's assets, properties and rights related to its wastewater collection and conveyance 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 Valley Township, and limited portions of East Fallowfield Township, Sadsbury Township, and West Caln Township, Chester County, Pennsylvania; Docket No. A-2020-3020178 *et al.***

**Prehearing Conference Memorandum of Pennsylvania-American Water Company**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Prehearing Conference Memorandum of Pennsylvania-American Water Company in the

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above-referenced matter. A copy is being served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

COZEN O'CONNOR



By: David P. Zambito  
Counsel for *Pennsylvania-American Water  
Company*

DPZ:kmg  
Enclosure

cc: Administrative Law Judge Conrad A. Johnson  
Administrative Law Judge Emily I. DeVoe  
Nick Miskanic  
Per Certificate of Service  
Susan Simms Marsh, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American :  
Water Company under Section 1102(a) of the :  
Pennsylvania Public Utility Code, 66 Pa C.S. :  
§ 1102(a), for approval of (1) the transfer, by sale, :  
of substantially all of Valley Township’s assets, :  
properties and rights related to its water treatment :     Docket No. A-2020-3019859, *et*  
and distribution system to Pennsylvania-American :     *al.*  
Water Company, and (2) the rights of :  
Pennsylvania-American Water Company to begin :  
to offer or furnish water service to the public in :  
Valley Township, a portion of West Caln and East :  
Fallowfield Townships, Chester County, :  
Pennsylvania :

and

In re: Application of Pennsylvania-American Water :  
Company under Section 1102(a) of the :  
Pennsylvania Public Utility Code, 66 Pa C.S. § :  
1102(a), for approval of (1) the transfer, by sale, of :  
substantially all of Valley Township’s assets, :  
properties and rights related to its wastewater :     Docket No. A-2020-3020178, *et*  
collection and conveyance system to :     *al.*  
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 Valley Township, and limited :  
portions of East Fallowfield Township, Sadsbury :  
Township and West Caln Township, Chester :  
County, Pennsylvania :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 21st day of June, 2021 served a true copy of the foregoing **Prehearing Conference 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).

**Due to the COVID-19 Pandemic, Service is Being Made by E-Mail Only**

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Respectfully submitted,



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**Counsel for *Pennsylvania-American Water  
Company***

Date: June 21, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judge Conrad A. Johnson  
Administrative Law Judge Emily I. DeVoe

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In re: Application of Pennsylvania-American Water Company :  
under Section 1102(a) of the Pennsylvania Public Utility Code, 66 :  
Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, of :  
substantially all of Valley Township’s assets, properties and rights :  
related to its water treatment and distribution system to : Docket No. A-2020-3019859, *et*  
Pennsylvania-American Water Company, and (2) the rights of : *al.*  
Pennsylvania-American Water Company to begin to offer or :  
furnish water service to the public in Valley Township, a portion of :  
West Caln and East Fallowfield Townships, Chester County, :  
Pennsylvania. :

and

In re: Application of Pennsylvania-American Water Company :  
under Section 1102(a) of the Pennsylvania Public Utility Code, 66 :  
Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, of :  
substantially all of Valley Township’s assets, properties and rights : Docket No. A-2020-3020178, *et*  
related to its wastewater collection and conveyance system to : *al.*  
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 Valley Township, and limited :  
portions of East Fallowfield Township, Sadsbury Township, and :  
West Caln Township, Chester County, Pennsylvania. :

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

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AND NOW COMES Pennsylvania-American Water Company (“PAWC”), by and through its counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order for Telephonic Conference issued by Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe (the “ALJs”) on May 18, 2021, to file this Prehearing Conference Memorandum in the above-referenced matters. In support thereof, PAWC states as follows:

## **I. INTRODUCTION AND PROCEDURAL HISTORY**

### **A. The Water Application**

PAWC and Valley Township (“Valley”) entered into an Asset Purchase Agreement (“the Water APA”) dated as of December 17, 2019, by which PAWC will purchase the water system (the “Water System”) presently owned by Valley. On April 14, 2020, Valley filed a Petition for Declaratory Order with the Pennsylvania Public Utility Commission (“Commission”) at Docket No. P-2020-3019476, asking the Commission to find that its provision of water service to 22 residents of West Caln and East Fallowfield Townships, Chester County, Pennsylvania, is not subject to regulation by the Commission. On August 6, 2020, the Commission found that Valley’s service to these customers is not jurisdictional because it is not public utility service within the meaning of Section 102 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 102 (“Definitions”). *Petition of Valley Township for a Declaratory Order Regarding the Provision of Water Service to 22 Residents of West Caln Township and East Fallowfield Township*, Docket Nos. P-2020-3019476 and P-2020-3019477 (Opinion and Order entered August 6, 2020) (*Petition of Valley Township*).

On October 9, 2020, PAWC filed an application at Docket No. A-2020-3019859 asking the Commission to approve its acquisition of the Water System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329 (the “Water Application”). Erika L. McLain, Esq. and John M. Coogan, Esq., entered their appearances on behalf of the Commission’s Bureau of Investigation and Enforcement (“I&E”) on November 5, 2020.<sup>1</sup> On October 27, 2020, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Water Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by November 10, 2020). On November 10, 2020, PAWC filed the information requested by TUS following its completeness review. On November 19, 2020, TUS staff notified PAWC that certain information remained missing. PAWC filed the requested information on November 23, 2020. On

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<sup>1</sup> Mr. Coogan withdrew his appearance on April 1, 2021.

December 2, 2020, PAWC amended the Water Application by modifying its answers to certain Standard Data Requests, its testimony, and its customer notice.

On December 23, 2020, the Office of Consumer Advocate (“OCA”) filed its Protest and Public Statement in this proceeding. Appearing for the OCA were Santo G. Spataro, Esq.,<sup>2</sup> Christine Maloni Hoover, Esq., Erin Gannon, Esq., and Harrison W. Breitman, Esq. Erin K. Fure, Esq., entered her appearance on behalf of the Office of Small Business Advocate (“OSBA”) on January 5, 2021.

On March 19, 2021, the Commission notified PAWC that the Water Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Water Application until PAWC complied with certain service and notice requirements. On May 11, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of March 19, 2021.

On May 18, 2021, the Commission notified PAWC that it had finally accepted the Water Application. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* with a protest deadline of June 21, 2021. The notice was published on Saturday, May 29, 2021. 51 *Pa. B.* 3079. The Commission also issued a Call-in Telephonic Pre-Hearing Conference Notice in Docket Nos. A-2020-3019859 and A-2020-3020178. The Pre-Hearing Conference was scheduled for June 23, 2021. The ALJs issued their Prehearing Conference Order for Telephonic Conference on May 18, 2021.

On May 19, 2021, PAWC filed a Motion to Consolidate the Water Application and the Wastewater Application (defined below). On May 21, 2021, Valley filed a Petition to Intervene.

**B. The Wastewater Application**

PAWC and Valley entered into an APA (the “Wastewater APA”) dated as of December 17, 2019, by which PAWC will purchase the wastewater system (the “Wastewater System”) presently owned by Valley. On April 14, 2020, Valley filed a Petition for Declaratory Order with the Commission at Docket

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<sup>2</sup> Mr. Spataro withdrew his appearance on April 12, 2021.

No. P-2020-3019477 asking the Commission to find that its provision of wastewater collection and conveyance service to 30 residents of West Caln, Sadsbury, and East Fallowfield Townships, Chester County, Pennsylvania is not subject to regulation by the Commission. On August 6, 2020, the Commission found that Valley's service to these customers is not jurisdictional because it is not public utility service within the meaning of Section 102 of the Code, 66 Pa. C.S. § 102 ("Definitions"). *Petition of Valley Township.*

On October 9, 2020, PAWC filed an application at Docket No. A-2020-3020178 asking the Commission to approve its acquisition of the Wastewater System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329 (the "Wastewater Application"). On October 22, 2020, staff from TUS notified PAWC that they had performed a completeness review of the Wastewater Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by November 10, 2020). On November 5, 2020, PAWC filed the information requested by TUS following its completeness review. Also on November 5, 2020, Erika L. McLain, Esq. and John M. Coogan, Esq., entered their appearances on behalf of I&E.<sup>3</sup>

On December 23, 2020, TUS staff notified PAWC that certain information remained missing. After receiving an extension of time, PAWC filed the requested information on February 8, 2021 and filed updated information on March 15, 2021.

On December 23, 2020, the OCA filed its Protest and Public Statement in this proceeding. Appearing for the OCA were Santo G. Spataro, Esq.,<sup>4</sup> Christine Maloni Hoover, Esq., Erin Gannon, Esq., and Harrison W. Breitman, Esq. Erin K. Fure, Esq., entered her appearance on behalf of OSBA on January 5, 2021.

On March 19, 2021, the Commission notified PAWC that the Wastewater Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Wastewater Application until PAWC complied with certain service and notice requirements. On

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<sup>3</sup> Mr. Coogan withdrew his appearance on April 1, 2021.

<sup>4</sup> Mr. Spataro withdrew his appearance on April 12, 2021.



May 11, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of March 19, 2021.

On May 18, 2021, the Commission notified PAWC that it had finally accepted the Wastewater Application. The Commission further notified PAWC that notice of the Wastewater Application would be published in the *Pennsylvania Bulletin* with a protest deadline of June 21, 2021. The notice was published on Saturday, May 29, 2021. 51 *Pa. B.* 3078. The Commission also issued a Call-in Telephonic Pre-Hearing Conference Notice in Docket Nos. A-2020-3019859 and A-2020-3020178. The Pre-Hearing Conference was scheduled for June 23, 2021. The ALJs issued their Prehearing Conference Order for Telephonic Conference on May 18, 2021.

On May 19, 2021, PAWC filed a Motion to Consolidate the Water Application and the Wastewater Application. On May 21, 2021, Valley filed a Petition to Intervene.

## **II. COUNSEL**

Counsel for PAWC are:

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## **III. SERVICE OF DOCUMENTS**

PAWC's attorneys are authorized to accept service on behalf of PAWC in this proceeding. The Parties have agreed to service by e-mail, and have agreed to the mutual waiver of service of hard copies of documents due to the COVID-19 Pandemic. PAWC requests that all listed counsel for PAWC receive

electronic service via email. Additionally, PAWC has established a virtual data room for the proceeding to which the other parties have access.

#### **IV. ISSUES**

##### **A. Procedural Matters**

It appears that the Water Application and the Wastewater Application have already been consolidated. If so, PAWC's Motion to Consolidate is moot. Valley has filed Petitions to Intervene in both the Water Application and the Wastewater Application proceedings. PAWC is not aware of any other outstanding Petitions or Motions at this time.

##### **B. Satisfaction of Section 1102 Standards**

PAWC submits that the acquisition of the Water System and the Wastewater System (together, the "Transaction") is necessary or proper for the service, accommodation, convenience or safety of the public. PAWC submits that the Transaction provides substantial affirmative public benefits and that PAWC, as an existing public utility, is presumed to possess the legal, financial, and technical fitness to own and operate the Valley Water System and the Valley Wastewater System. Indeed, PAWC is the largest investor-owned water and wastewater service provider in the Commonwealth. The Transaction will promote the Commission's goal of regionalization and consolidation, and the purchase price is reasonable in light of the appraisals that have been performed by the Utility Valuation Experts (singularly, "UVE" or, collectively, "UVEs"). Commission approval of the Transaction will open the possibility of further consolidation and regionalization of wastewater services in southeastern Pennsylvania.

##### **C. Satisfaction of Section 1329 Standards**

PAWC submits that it has complied with all of the requirements of Section 1329. For the Water System, the negotiated purchase price for the acquired assets is \$7,325,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$11,051,185 ( $\$11,570,369 \text{ AUS} + \$11,051,185 \text{ Gannett Fleming Valuation and Rate Consultants, LLC (rounded)} = \$22,102,369/2 = \$11,051,185$ ). Accordingly,

the negotiated purchase price of \$7,325,000 is the fair market value for ratemaking purposes under Section 1329 (*i.e.*, the lower of the negotiated purchase price and the average of the UVEs' appraisals).

For the Wastewater System, the negotiated purchase price for the acquired assets is \$13,950,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$19,463,530 ( $\$19,081,059 \text{ AUS} + \$19,846,000 \text{ Gannett Fleming Valuation and Rate Consultants, LLC (rounded)} = \$38,927,059/2 = \$19,463,530$ ). Accordingly, the negotiated purchase price of \$13,950,000 is the fair market value for ratemaking purposes under Section 1329 (*i.e.*, the lower of the negotiated purchase price and the average of the UVEs' appraisals).

Neither the Water APA nor the Wastewater APA contains a "rate stabilization plan" as defined by Section 1329. As permitted by Section 1329, PAWC has petitioned -- as part of the instant filing -- for approval to implement a Distribution System Improvement Charge with respect to customers in the applied-for service territory. PAWC has also, in accordance with Section 1329, petitioned for approval to accrue and defer certain post-acquisition improvement costs associated with the provision of service in the applied-for territory.

#### **D. Certificates of Filing or Approvals for Section 507 Agreements**

Section 507 of the Code, 66 Pa. C.S. § 507, generally requires PAWC to file with the Commission any agreement between PAWC and a municipal corporation. PAWC seeks either a Certificate of Filing or approval of: (a) the Water APA; (b) the Wastewater APA; (c) the November 16, 1988 Sewer and Water Service Agreement Between West Caln Township, Valley, Valley Township Authority and Highlands Corporate Center;<sup>5</sup> and (d) the November 15, 2011 Agreement between Valley and Sadsbury Township.

#### **V. WITNESSES**

PAWC has already submitted direct testimony and exhibits sponsored by the following witnesses in written question and answer form:

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<sup>5</sup> Valley Township Authority was subsequently disbanded.

Mr. Keith E. Gabage

Mr. Gabage is Senior Manager of Business Development for PAWC. His business address is 100 Cheshire Court, Suite 104, Coatesville PA 19320 and his business phone number is (484) 789-5733. Mr. Gabage provided an overview of the Transaction. He explained why the Transaction is in the public interest and provides affirmative public benefits of a substantial nature. In addition, he explained why the Application should be promptly approved by the Commission. Finally, he explained that PAWC is legally, financially, and technically fit to acquire and operate the Water System and the Wastewater System.

Mr. Michael J. Guntrum, P.E.

Mr. Guntrum is a Senior Project Engineer with PAWC. His business address is 852 Wesley Drive, Mechanicsburg, PA 17055 and his business phone number is (717) 550-1615. He described the System and explained how it will be integrated into PAWC's existing operations. He also described PAWC's technical fitness to run the Water System and the Wastewater System, together with the benefits of the Transaction.

Mr. Rod P. Nevirauskas

Mr. Nevirauskas is the Senior Director of Rates and Regulations for the Mid-Atlantic Division of American Water Works Service Company ("AWWSC"). Mr. Nevirauskas's business address is 852 Wesley Drive, Mechanicsburg, PA 17011 and his business phone number is (717) 550-1580. He testified to PAWC's financial fitness to acquire and operate the System. He also identified the ratemaking rate base, estimated the transaction and closing costs incurred by PAWC, summarized the rate provisions in the Water APA and the Wastewater APA, and described the benefits of the Transaction. In addition, he explained PAWC's intentions with respect to the accrual of certain post-acquisition improvement costs and deferral of related depreciation.

Mr. Jerome Weinert, ASA, PE, DCP

Mr. Weinert is a Principal and Director in the consulting operation of Associated Utility Services, Inc. Mr. Weinert has a business address of 8555 West Forest Home Avenue, Suite 201, Greenfield, WI 53228. He described the fair market value appraisals of the Water System and the Wastewater System that he and his staff performed on behalf of PAWC.

If necessary, PAWC will submit rebuttal and rejoinder testimony of these witnesses. PAWC also reserves the right to call additional witnesses and to present testimony on additional issues that may arise during the course of the proceeding.

**VI. DISCOVERY**

Considering the six-month deadline for a Commission decision on a Section 1329 Application, PAWC proposes the following modifications to the Commission's discovery rules. This proposal is similar to the modifications of the discovery rules in PAWC's past Section 1329 applications.

I. Answers to written interrogatories shall be served in-hand within five (5) calendar days of service.

II. 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.

III. 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.

IV. 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.

V. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within (5) calendar days.

VI. Requests for admissions will be deemed admitted unless answered within three (3) calendar days of service.

VII. 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.

VIII. The parties are directed to make every reasonable effort to comply with these discovery response times. 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.

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

**VII. PROTECTIVE ORDER**

PAWC reserves the right to file a Petition for Protective Order in these matters.

**VIII. PROCEDURAL SCHEDULE**

PAWC has no objection to the following dates, which were contained in the ALJs' Prehearing

Conference Order:

Non-Company Direct Testimony	June 25, 2021
Rebuttal Testimony	June 30, 2021
Surrebuttal Testimony	July 6, 2021
Hearings (With Oral Rejoinder Testimony)	July 9 and, if necessary, July 12, 2021
Main Briefs	July 26, 2021
Reply Briefs	August 4, 2021
Recommended Decision	September 7, 2021
Exceptions	September 17, 2021
Replies to Exceptions	September 27, 2021
Public Meeting	October 28, 2021

In addition, PAWC requests that one public input hearing be scheduled as soon as possible.

Counsel for PAWC notified the ALJs via e-mail on June 16, 2021 that all of the parties to the case as of that date had reached an agreement in principle to resolve all of the issues involved in these proceedings; provided, however, that the parties reserved the right to address any new or novel issue raised at the public input hearing. If no other parties enter these proceedings, PAWC requests that the ALJs direct the settling parties to submit the settlement documents within fifteen calendar days after the public input hearing.

**IX. SETTLEMENT DISCUSSIONS**

As stated above, all of the parties to the case as of June 16, 2021 have reached an agreement in principle to resolve all of the issues involved in these proceedings; provided, however, that the parties reserve the right to address any new or novel issue raised at the public input hearing. If other parties enter the proceeding, PAWC is open to reaching a reasonable settlement with those parties as well.

[Signatures appear on next page.]

Respectfully submitted,



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Counsel for *Pennsylvania-American Water  
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Date: June 21, 2021