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December 10, 2021

Via Electronic Filing

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

RE: Docket No. A-2021-3024681 – Application of Pennsylvania-American Water Company to Acquire the Wastewater System Assets of the City of York

Dear Secretary Chiavetta:

We serve as counsel to Manchester Township, West Manchester Township, North York Borough, York Township, and Spring Garden Township (the “Municipalities”) in the above-referenced matter and are submitting, with this letter, the Municipalities’ Prehearing Conference Memorandum. This document is also being served on all parties of record via electronic mail.

Very truly yours,

Matthew S. Olesh

cc: The Honorable Steven K. Haas, Administrative Law Judge
All parties of record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water Company – Wastewater Division under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a) and 1329 (relating to enumeration of acts requiring certificate and valuation of acquired water and wastewater systems), for approval of: (1) the transfer, by sale, of substantially all of the wastewater collection and conveyance system assets, properties and rights related to the wastewater collection and treatment system owned by York City Sewer Authority and operated by the City of York; (2) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of York, and to three bulk service interconnection points located in North York Borough, Manchester Township, and York Township, York County, Pennsylvania; and (3) the right of Pennsylvania-American Water Company to begin to offer and furnish Industrial Pretreatment Program to qualifying industrial customers in Manchester Township, Spring Garden Township, and West Manchester Township, York County, Pennsylvania.

A-2021- 3024681

PREHEARING MEMORANDUM

Manchester Township, North York Borough, Spring Garden Township, York Township and West Manchester Township (collectively referred to herein as the “Protesting Municipalities”), by and through their attorneys, Obermayer Rebmann Maxwell & Hippel LLP, submit this prehearing memorandum pursuant to the Prehearing Conference Order in advance of the December 14, 2021 Prehearing Conference in this matter.

I. Procedural Background

A. The Instant Application

This proceeding concerns the July 1, 2021 application of Pennsylvania-American Water Company (“PAWC”) for approval to acquire the wastewater system assets of the City of York

(“the City”) pursuant to Sections 1102, 1329, and 507 of the Pennsylvania Public Utility Code (the “Application”).

The Protesting Municipalities transport wastewater to the City and its sewer authority for treatment and disposal pursuant to the terms of intermunicipal sewer agreements between each respective Protesting Municipality and the City (hereinafter the “IMAs”). Under the terms of the IMAs, in the event that the 1976 York City Sewer Authority bonds, as well as any future bonds that may be issued in connection with the City’s system, are retired, then the IMAs automatically terminate and “shall be entirely renegotiated.” In addition to its Application, PAWC also filed a petition to modify the IMAs to permit PAWC to assume all rights and obligations of the City under the IMAs and modify its rate formula pursuant to the Commission’s extraordinary authority under Section 508 of the Public Utility Code (the “Petition”).

By Secretarial Letter dated August 12, 2021, the Commission, *inter alia*, conditionally accepted the application. By Secretarial Letter dated October 29, 2021, the Commission, *inter alia*, accepted the application for filing. Administrative Law Judge Steven K. Haas was assigned to preside over the proceeding. An Initial Prehearing Conference has been noticed for December 14, 2021. Judge Haas issued the Prehearing Conference Order on November 22, 2021 which requires the parties to file and serve their prehearing memoranda by 1:00 PM on December 10, 2021.

On December 10, 2021, the Protesting Municipalities submitted a Protest in this matter to protect their rights under the IMAs, and consequently submit this prehearing memorandum.

B. Related Arbitration

On August 20, 2021, the Protesting Municipalities filed an arbitration proceeding against the City (the “Arbitration”) that raises threshold legal claims that must be decided before this

Application can be decided. These issues include whether or not the City can assign the IMAs to PAWC, an issue that is directly material to this application. Indeed, this application assumes that the answer to that question is that the City can do so, when the Protesting Municipalities assert in the arbitration that this is not the case. PAWC's application – and specifically, the extraordinary relief it seeks in its Petition to unilaterally modify the IMAs to substitute PAWC as a party in place of the City – specifically recognizes this as a material, threshold issue.

II. Issues

The Protesting Municipalities intend to address the following issues in this proceeding:

- Whether PAWC's Application is premature should be stayed until such time as all issues raised in the Petition and any protests or other responses thereto are resolved:
 - The Protesting Municipalities respectfully submit that, as submitted, the Application is, at best, incomplete until all issues relating to the Agreement in PAWC's Section 508 Petition are resolved, as PAWC has no rights under the IMAs at present or any agreement with the Protesting Municipalities, nor would it if the Proposed Transaction were to proceed to closing with no modification to the IMAs;
- Even if not premature, whether PAWC's Application is defective because by the express terms of the IMAs, the City must renegotiate the terms of the IMAs when all debt associated with the System is retired or discharged (which is an express condition to closing the Proposed Transaction under the APA):
 - The Application is irreparably defective without any new agreements with the Protesting Municipalities because it seeks approval of contracts that

will not exist at closing and is premised on a valuation that anticipates revenue streams that will not exist;

- Whether the Proposed Transaction can be approved under 66 Pa.C.S. § 507, because the City has communicated – through its words and actions – that it will not engage in discussions with Municipalities to renegotiate the IMAs; therefore, the IMAs will be a nullity and no longer effective at closing of the Proposed Transaction;
- Even if the IMAs did not terminate when all debt associated with the system is retired, whether the City has the right to transfer the IMA because the City may only assign its rights and obligations to “an agency or municipality” and, as a regulated public utility corporation, PAWC is neither an agency or municipality (an issue currently being actively litigated in arbitration before the AAA);
- Whether PAWC’s Petition is premature, and should be stayed until such time as all issues regarding the IMAs currently pending in arbitration by the Municipalities are resolved;
- Whether PAWC’s requested amendments to the IMAs by way of its Petition are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth;
- Whether the City’s attempts to unilaterally amend the terms of IMAs that will not exist at the closing of the Proposed Transaction is in the public interest;
- Whether the Proposed Transaction provides an affirmative benefit to the public, when the City has attempted to force the Municipalities to renegotiate terms of the IMAs under duress by way of Ordinance that arbitrarily sets default bulk service

rates to be charged to the Municipalities unless otherwise provided for in a valid intermunicipal sewer agreement.;

- Whether the rates sought to be imposed upon the Protesting Municipalities are fair, reasonable, and in the public interest; and
- Whether the acquisition of the City's assets and contracts by PAWC would provide an affirmative benefit to the public.

III. Witnesses

The Protesting Municipalities expect to present the testimony of the following individuals: (1) Timothy R. James, the Township Manager for Manchester Township, (2) Kelly Kelch, the Township Manager for West Manchester Township, (3) Marcy Krum-Tinsley, the Township Manager for Spring Garden Township, (4) Richard Shank, the Borough Council President for North York Borough, and (5) Gary Milbrand, the Township Manager for York Township. However, the Protesting Municipalities reserve their right to call additional witnesses, if necessary, and agree to notify Administrative Law Judge Haas and the parties promptly should they determine that any additional witnesses will be called.

IV. Service

The Protesting Municipalities request that their entry on the service should be for its counsel. Pursuant to 52 Pa. Code § 1.54(b)(3), counsel consents to the electronic service of all documents at the e-mail addresses shown below:

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V. Settlement

The Protesting Municipalities are willing to discuss full or partial settlement with PAWC and the City to limit the issues that must be litigated before the Commission.

VI. Discovery

The Protesting Municipalities agree to the expedited discovery rules presented in Administrative Law Judge Haas's Prehearing Conference Order.

Respectfully submitted,

/s/ Thomas Wyatt

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Dated: December 10, 2021

CERTIFICATE OF SERVICE

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing pre-hearing memorandum upon the following parties by electronic mail:

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/s/ Matthew Olesh

Dated: December 10, 2021