



December 10, 2021

VIA E-FILING

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the York City Sewer Authority and operated by the City of York, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of York, Pennsylvania, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania, and (3) the rights 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; Docket Nos. A-2021-3024681, *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 above-referenced matter. Copies have been served as shown on the enclosed certificate of service.

Please contact me if you have any question or concern. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg
Enclosure

cc: Administrative Law Judge Steven K. Haas
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, to :
Pennsylvania-American Water Company, of substantially all of the : Docket No. A-2021-3024681, *et*
assets, properties and rights related to the wastewater collection and : *al.*
treatment system owned by the York City Sewer Authority and :
operated by the City of York, (2) the rights of Pennsylvania- :
American Water Company to begin to offer or furnish wastewater :
service to the public in the City of York, Pennsylvania, and to three :
bulk service interconnection points located in North York Borough, :
Manchester Township and York Township, York County, :
Pennsylvania, and (3) the rights 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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of December, 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).

VIA E-MAIL AND FIRST CLASS MAIL

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David P. Zambito, Esq.
Counsel for *Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Steven K. Haas

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, to Pennsylvania-American Water Company, of :
substantially all of the assets, properties and rights related to : Docket No. A-2021-3024681, *et*
the wastewater collection and treatment system owned by the : *al.*
York City Sewer Authority and operated by the City of York, :
(2) the rights of Pennsylvania-American Water Company to :
begin to offer or furnish wastewater service to the public in :
the City of York, Pennsylvania, and to three bulk service :
interconnection points located in North York Borough, :
Manchester Township and York Township, York County, :
Pennsylvania, and (3) the rights 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 :

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

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 the Prehearing Conference Order issued by Administrative Law Judge Steven K. Haas (the “ALJ”) on November 22, 2021, to file this Prehearing Conference Memorandum in the above-referenced matter. In support thereof, PAWC states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

PAWC, the City of York (the “City”) and the York City Sewer Authority (the “Authority”) entered into an Asset Purchase Agreement (“the APA”) dated as of April 6, 2021, by which PAWC will purchase the wastewater system (the “System”) presently owned by the Authority and operated by the City. On July 1, 2021, PAWC filed an application (as subsequently amended, the “Application”) at Docket No. A-2021-3024681 *et al.*, asking the Pennsylvania Public Utility Commission (“Commission”) to approve its acquisition of the System (the “Transaction”) pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329. On July 23, 2021, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. On August 6, 2021, PAWC filed the information requested by TUS following its completeness review.

On August 12, 2021, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain service and notice requirements. An amendment to the Application was filed on October 22, 2021 to comply with the August 12, 2021 Secretarial Letter. On October 27, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of August 12, 2021. On October 29, 2021, the Commission notified PAWC that it had finally accepted the Application. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* on November 27, 2021¹ with a protest deadline of December 13, 2021. The Commission issued a Call-in Telephonic Pre-Hearing Conference Notice scheduling a Pre-Hearing

¹ The notice was published at 51 *Pa. Bull.* 7390 (November 27, 2021).

Conference for December 14, 2021. The ALJ issued his Prehearing Conference Order on November 22, 2021.

On July 12, 2021, Erin K. Fure, Esq., entered her Notice of Appearance on behalf of the Office of Small Business Advocate (“OSBA”), and filed the OSBA’s Notice of Intervention in this matter. On July 21, 2021, Carrie B. Wright, Esq., entered her Notice of Appearance on behalf of the Commission’s Bureau of Investigation and Enforcement (“I&E”). On July 23, 2021, Harrison W. Breitman, Esq. and Erin L. Gannon, Esq, filed a Notice of Appearance on behalf of the Office of Consumer Advocate (“OCA”), and filed the OCA’s Protest in these proceedings. On July 30, 2021, Thomas T. Niesen, Esq. filed the Authority’s Petition to Intervene, and on November 8, 2021, Adeolu A. Bakare, Esq. filed the City’s Petition to Intervene. On December 9, 2021, Devin T. Ryan, Esq. and Michael W. Hassell, Esq. filed the Protest of The York Water Company.

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. 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

The Authority and the City have filed Petitions to Intervene. PAWC is not aware of any other outstanding Petitions or Motions at this time.

B. Satisfaction of Section 1102 Standards

PAWC submits that 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 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 southcentral Pennsylvania.

C. Satisfaction of Section 1329 Standards

PAWC submits that it has complied with all of the requirements of Section 1329. The negotiated purchase price for the acquired assets is \$235,000,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$254,856,690 (\$240,336,741 AUS Consultants, Inc. + \$269,376,640 (rounded) ScottMadden, Inc. = \$509,713,381/2 = \$254,856,690). Accordingly, the negotiated purchase price of \$235,000,000 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).

The APA does not contain a "rate stabilization plan" as defined by Section 1329. The APA also provides that PAWC will not charge Authority customers a Distribution System Improvement Charge ("DSIC") prior to the effective date of PAWC's next PUC-approved base rate case. 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 APA; (b) the Articles of Agreement, as amended, By and Among City of York and Spring Garden Township Dated as of December 8, 1976; (c) the Articles of Agreement, as amended, By and Among City of York and Manchester Township Dated as of December 9, 1976; (d) the Articles of Agreement, as amended, By and Among City of York and North York Borough Dated as of December 10, 1976; (e) the Articles of Agreement, as amended, By and Among City of York and West Manchester Township Dated as of December 10, 1976; (f) the Articles of Agreement By and Among City of York and York Township Dated as of

December 10, 1976; and (g) the Articles of Agreement By and Among City of York and Springettsbury Township Dated as of March 19, 2002.

E. Modification of Municipal Contracts Pursuant to Section 508

PAWC further requests, pursuant to Code Section 508, 66 Pa C.S. § 508, that the Commission modify certain agreements to be assumed by PAWC as a result of the Transaction (the “Section 508 Agreements”). Section 508 permits the Commission to modify any contract between a public utility and a person, corporation or municipal corporation that concerns the public interest. The Section 508 Agreements are agreements for bulk service with municipalities surrounding the City (the Borough of North York and the Townships of Manchester, West Manchester, Spring Garden and York), and the agreement for bulk service with The York Water Company (to whom the Borough of West York agreement has been assigned).

A modification is necessary because the agreements contain a rate formula that includes an Authority debt component, but this component will no longer be applicable after Closing on the Transaction due to York’s intent to retire its debt upon, or shortly after, Closing. Even though PAWC will be assuming the municipal agreements and the agreement with The York Water Company (if they are not previously renegotiated), PAWC has its own debt and will not be assuming the Authority debt. It is not in the public interest for a contract to contain an incomplete rate formula. Modification will provide rate certainty for all parties involved and will not otherwise affect the contractual obligations of PAWC and the municipalities.

The modification would be limited to setting rates to be charged by PAWC, and preserving capacity allocations at pre-Closing levels, during a possible short transition period between Closing and the earlier of (i) termination of the assumed agreements or (ii) renegotiation of the

assumed agreements (which the agreements require upon retirement of the Authority's bonds). All other provisions of the contracts would remain unchanged.

V. WITNESSES

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

Mr. Bernard J. Grundusky, Jr.

Mr. Grundusky is Senior Director of Business Development for PAWC. His business address is 852 Wesley Drive, Mechanicsburg, PA 17055 and his business phone number is (717) 550-1590. Mr. Grundusky 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 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 System, together with the benefits of the Transaction.

Ms. Ashley E. Everette

Ms. Everette is the Senior Director of Rates and Regulatory for American Water Works Service Company (“AWWSC”). Ms. Everette’s business address is 852 Wesley Drive, Mechanicsburg, PA 17055 and her business phone number is (717) 550-1536. She testified to PAWC’s financial fitness to acquire and operate the System. She also identified the ratemaking rate base, estimated the transaction and closing costs incurred by PAWC, summarized the rate provisions in the APA, and described the notice sent to existing water and wastewater customers of PAWC and existing customers of the System. In addition, she 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 appraisal of the 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. PROTECTIVE ORDER

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

VII. PROCEDURAL SCHEDULE

The Parties (other than The York Water Company, who filed a Protest very recently) have agreed to the following procedural schedule:

Prehearing Conference	December 14, 2021
Non-Company Direct Testimony	December 17, 2021
Rebuttal Testimony	January 4, 2022
Surrebuttal Testimony	January 14, 2022
Rejoinder Outline Due	January 17, 2022 ²
Hearings (With Oral Rejoinder Testimony)	January 18-19, 2022
Main Briefs	January 26, 2022
Reply Briefs	February 1, 2022
Recommended Decision	February 28, 2022
Exceptions	March 7, 2022
Replies to Exceptions	March 14, 2022
Public Meeting	April 14, 2022

A public input hearing is not necessary in this case. To date, PAWC has received very few customer comments in response to the customer notice. Public input hearings in prior PAWC Section 1329 proceedings have had very few witnesses.

If a public input hearing is required, it should be limited to one telephonic hearing in the evening. Notice of the hearing should be given in the same way it was given in prior PAWC § 1329 proceedings (through (a) a joint press release issued by PAWC, the City and the Authority, (b) PAWC's, the City's and the Authority's social media, and (c) notice on PAWC's, the City's

² Since this date is a holiday, this document will be circulated among the Parties via e-mail.

and the Authority's websites). Newspaper notice should not be required due to the cost (in excess of \$180,000 in prior cases) and declining newspaper readership.

VIII. SETTLEMENT DISCUSSIONS

PAWC believes that there is a reasonable possibility of settlement. PAWC is open to and available for settlement discussions with the other Parties, and has already taken the initiative to schedule settlement conferences.

Respectfully submitted,



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Date: December 10, 2021