

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

In re: Application of Pennsylvania-American	:	A-2021-3024681
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	:	

ORDER

BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge
Steven K. Haas dated February 28, 2022;

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Unanimous Settlement of All Issues submitted on February 1, 2022 by Pennsylvania-American Water Company, the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, the City of York, the York City Sewer Authority, the York Water Company, Manchester Township, West Manchester Township, North York Borough, York Township and Spring Garden Township, at Docket No. A-2021-3024681, including all terms and conditions thereof, be approved without modification.

2. That Joint Parties Exhibit No. 1, identifying and evidencing the stipulation for the admission of evidence of all statements and exhibits contained therein agreed to by all the parties and submitted on January 18, 2022, is hereby admitted.

3. That the Application filed by PAWC on July 1, 2021, as amended, be approved, subject to the following conditions:

(a) That such Certificates of Public Convenience be issued as necessary to evidence its approval under 66 Pa.C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Authority and operated by the City to PAWC, (ii) the right of PAWC to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection and treatment system owned by the Authority and operated by the City 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 (iii) the right of PAWC to offer and furnish Industrial Pretreatment Program to qualifying industrial customers in Manchester Township, Spring Garden Township, and West Manchester Township, York County, Pennsylvania.

(b) That the Commission approve an IPP service territory that includes each current IPP customer located outside the City's municipal boundaries, as shown on the Application's Appendix A-16-a through e – IPP. The pro forma tariff attached to the Application as Amended Appendix A-12 includes fees for IPP service.

(c) That, in its first base rate case filed after the transaction Closing date, PAWC will provide a report on which York IPP customers have remained with PAWC and which are no longer receiving IPP service. In the first base rate case filed after the transaction Closing date, PAWC will provide cost of service information for the IPP service as it is developed at that point in time. If PAWC has not completed its cost of service information for the IPP service rates prior to the first base rate case filed after the transaction Closing date, it agrees to provide the cost of service calculation and comparison to existing IPP rates to the statutory advocates as part of its subsequent rate filing.

(d) That the Commission permit PAWC to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Application as **Amended Appendix A-12**, to be effective immediately upon closing of the transaction.

(e) That, except as explicitly agreed upon in the Settlement, nothing contained in the Settlement or the Commission's approval of the Application shall preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC proceeding.

(f) That, in the first base rate case that includes the System:

(i) PAWC will propose to move the System to 1.47 times the current System rate or PAWC's proposed Rate Zone 1 system average wastewater rates, whichever is lower.

(ii) PAWC may propose an effective date for new rates for the System that is different from the effective date of new rates for other customers, provided that such effective date is at least three years after the Closing.

(iii) PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

(iv) OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Parties expressly recognize that the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph, may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

(v) The current rate for System residential wastewater customers with an average usage of 3,458 gallons per month is approximately \$32.60.

(g) That, pursuant to 66 Pa.C.S. § 1329, PAWC shall be permitted to use \$231,500,000 for ratemaking rate base purposes for the acquired System.

(h) That, pursuant to 66 Pa.C.S. § 1702, PAWC be permitted to record the acquisition at the net value of the assets (\$231,500,000), consistent with generally accepted accounting principles.

(i) That PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIIIP. Nothing in this paragraph shall be construed to modify the terms of Section 6.04(a) of the Asset Purchase Agreement establishing that the DSIC shall not be charged to System customers until PAWC's next Commission-approved base rate case.

(j) That, pursuant to 66 Pa.C.S. § 1329, PAWC be permitted to accrue Allowance for Funds Used During Construction for post-acquisition improvements not recovered through the distribution system improvement charge for book and ratemaking purposes.

(k) That, pursuant to 66 Pa.C.S. § 1329, PAWC be permitted to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.

(l) That, pursuant to 66 Pa.C.S. § 1329, PAWC be permitted to include, in its next base rate case, a claim for transaction and closing costs associated with the acquisition of the System.

(m) That the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA between PAWC, the City and the Authority shall be separately identified in PAWC's next base rate case and amounts expended by PAWC on behalf of the City or the Authority will be separately identified.

(n) That, pursuant to 66 Pa.C.S. § 507:

(i) The Commission shall issue a Certificate of Filing or approval for the Asset Purchase Agreement By and Among the Authority, as Seller, the City and PAWC, as Buyer, Dated as of April 6, 2021.

(ii) The Commission shall issue Certificates of Filing or approval for the *pro forma* Wastewater Treatment and Conveyance Agreement, filed on January 12, 2022, which will be entered into, in a substantially-similar form, by PAWC and each of the Municipalities separately, subject to review by the Commission in PAWC's first base rate case following Closing.

(iii) The Commission shall issue Certificates of Filing or approval for the *pro forma* Articles of Agreement, filed on January 12, 2022, which will be entered into, in a substantially-similar form, by PAWC and Springettsbury Township, subject to review by the Commission in PAWC's first base rate case following Closing.

(o) That the Commission approve the *pro forma* Wastewater Treatment and Conveyance Agreement, filed on February 1, 2022, which will be entered into, in a substantially-similar form, by PAWC and York Water, subject to review by the Commission in PAWC's first base rate case following Closing and in York Water's base rate cases following Closing.

(p) That Closing on the transaction shall be conditioned on:

(i) Filing of an executed bulk agreement, substantially similar to the Municipalities Bulk Agreement, by PAWC separately with each of the Municipalities.

(ii) Filing of an executed version of the Wastewater Treatment and Conveyance Agreement by PAWC and York Water, which is substantially similar to the version filed with the Commission on February 1, 2022.

(iii) Each Municipality and York Water receiving the transportation funds owed to each of them from the City at the time of Closing on the transaction and the City, York Water, and the Municipalities executing an Intermunicipal Agreement whereby each of Municipalities and York Water will pay any amount owed by or at Closing and the City will pay, at the time of Closing, an amount equal to the total of the underpayment of West York Borough minus the net amount due to the City to reconcile a City of York Wastewater Treatment Plant debt service billing error. The City reserves all rights to collect the debt service underpayment from West York Borough. Additionally, the Intermunicipal Agreement for the debt service billing reconciliation must state the amount of West York Borough's debt service underpayment that arose before York Water's closing on the West York Borough wastewater system. Further, the Intermunicipal Agreement must provide that: (1) the City agrees West York Borough is solely responsible for any claims arising from West York Borough's obligations prior to York Water's ownership of the West York Borough wastewater system; (2) the City waives any claims for payment from York Water for any West York Borough underpayment amount that accrued prior to York Water's ownership of the West York Borough wastewater system; and (3) the City does not waive any claims for payment from York Water for any York Water underpayment amount that accrued following York Water's ownership of the West York Borough wastewater system. Each of the Municipalities and York Water agrees to pay in full the final estimated sewer service invoice for services rendered through Closing as required by the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City. Additionally, the City shall establish an account at

Closing of \$2,000,000 to be held in escrow for City obligations to the Municipalities and York Water pending completion of the final audit and reconciliation of the sewer charges for 2019, 2020, 2021 and any relevant future period prior to Closing as required by the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City. As part of that final audit and reconciliation process, the City shall provide all documentation and audited statements that the City used to calculate the balances of the transportation funds for each of the Municipalities and York Water as well as sewer charges for 2019 to the present. Such documentation and audited statements shall be in sufficient detail to enable the Municipalities and York Water to confirm that: (1) the transportation fund balances were correctly calculated by the City; (2) no portion(s) of the transportation fund balances were omitted by the City; and (3) the reconciliation of sewer charges for the years 2019 to present are true and correct. If the Municipalities or York Water contest the City's reconciliation calculations, any proposed adjustments must be supported by documentation in sufficient detail to enable the City to confirm the correctness of the proposed adjusted calculations. Through this Settlement, the City agrees that York Water and the Municipalities have the legal right to pursue payment from the City of the remaining portion(s) of any such transportation fund balances that the City failed to refund, including any amounts in excess of the \$2 million to be held in escrow for the City's obligations to the Municipalities and York Water. Additionally, in recognition of the resolution on the Municipalities' and York Water's Bulk Agreements, the Municipalities, York Water, and the City shall jointly request by February 2, 2022, that the arbitrator issue an Order staying the consolidated proceedings docketed before the American Arbitration Association at AAA Case Nos. 01-21-0016-2228 and 01-21-0016-2942 and postponing all pending deadlines relating to discovery, motions, expert reports, and hearing dates in those proceedings pending issuance of a Final PUC Order approving the settlement. The Municipalities, York Water, and the City agree not to commence litigation in any court, forum, or tribunal raising the claims asserted by each of them, if any, in the consolidated arbitration proceedings while such stay remains in effect. In the event that the PUC modifies or does not approve the parties' settlement, any party shall have the right to request that the arbitrator lift the stay, in which case the Municipalities, York Water, and the City agree that they will then jointly request a case management conference with the arbitrator to set new dates for completion of discovery, motions, expert reports, and hearing in those consolidated proceedings.

(iv) Filing of an executed bulk agreement, substantially similar to the Springettsbury Bulk Agreement, by PAWC with Springettsbury Township.

(q) That, in the first base rate case that includes the System's assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System.

(r) That, in the first base rate case that includes the System's assets, PAWC will also provide a separate cost of service study for the System.

(s) That, within the first billing cycle following closing on the System, PAWC shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC also agrees to ongoing, targeted outreach to its York-area wastewater customers regarding its low income programs.

(t) That, except as set forth in the following paragraph, the transaction shall not be permitted to occur unless and until York has: (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) borne all costs and expenses for obtaining and conveying the missing easements and other property rights.

(u) That, for circumstances beyond York's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, PAWC and York may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.

(v) The issuance of any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the transaction contemplated in this Application in a lawful manner.

4. That the Commission's Secretary's Bureau shall issue Certificates of Public Convenience under 66 Pa.C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of the Authority's assets, properties and rights related to its wastewater collection and treatment system to PAWC as provided in the Application and Joint Petition, and (ii) PAWC's right to begin to offer, render, furnish and supply wastewater collection and treatment service in the areas served by the Authority as indicated in the Application and Joint Petition.

5. That, pursuant to 66 Pa.C.S. § 1329(c), the Commission approves a rate base addition of \$231,500,000 associated with the acquisition of the System.

6. That the Commission's proceeding at Docket No. A-2021-3024681 is terminated and marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more stylized.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 14, 2022