

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

Public Meeting held September 15, 2022

Commissioners Present:

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

Petition for Expedited Reconsideration of  
Application of Pennsylvania-American Water  
Company – Wastewater Division for approval of  
the right to: (1) acquire certain wastewater system  
assets from Foster Township; and (2) begin to  
offer, render, furnish or supply wastewater service  
to the public in portions of Foster Township,  
Luzerne County, Pennsylvania

A-2021-3028676

**ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Expedited Reconsideration (Petition) filed by the Pennsylvania American Water Company (PAWC). The Petition seeks reconsideration of our July 14, 2022 Order (July 14 Order) granting the Application of PAWC for approval of the right to: (1) acquire certain wastewater system assets from Foster Township; and (2) begin to offer, render, furnish or supply wastewater service to the public in portions of Foster Township, Luzerne County, Pennsylvania. In its Petition, PAWC requests that the Commission (1) acknowledge that PAWC had a procedural due process right to be informed of, and an opportunity to respond to, potential approval conditions before the Commission entered its July 14 Order, (2) delete Ordering Paragraph 7 of the July 14 Order, (3) modify Ordering Paragraph 2 of the July 14 Order, (4) clarify the requirements of Ordering Paragraph 10 of the July 14 Order, and (5) issue

a certificate of public convenience immediately upon the Commission's entry of an order on reconsideration. For the reasons set forth below, the Commission grants in part and denies in part PAWC's Petition.

## **BACKGROUND**

On September 22, 2021, pursuant to Section 1102(a)(1)(i) and 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(1)(i), (a)(3), PAWC<sup>1</sup> filed its Application with the Commission to acquire certain wastewater system assets from Foster Township and begin to offer, render, furnish, or supply wastewater service to the public in parts of Foster Township, Luzerne County, Pennsylvania. In addition, pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. § 507, PAWC sought certificates of filing for the Asset Purchase Agreement By and Among the Township of Foster and PAWC (APA) as well as four agreements with municipal corporations to be assumed at closing.

No protests were filed, and no hearings were held. The Commission entered its Order approving PAWC's Application on July 14, 2022. The Commission found that, based upon the facts that PAWC will expand its service territory in compliance with Commission regulations, will be able to meet the needs of new customers without apparent detriment to its existing customers, and has the technical, managerial, and financial fitness to operate and maintain the system assets, granting PAWC's application was necessary or proper for the service accommodation, convenience, or safety of the public and in the public interest. Order at 23.

In Ordering Paragraph 2 of its July 14 Order, the Commission directed that PAWC file a copy of (a) Foster Township's adopted Ordinance of 2022 establishing an Industrial Pretreatment Program and other Rules Controlling Discharges to the Sewer System and the attestation from the Secretary of Foster Township's Board of Supervisors certifying

---

<sup>1</sup> The application was filed by PAWC-Wastewater Division. We refer to PAWC generally throughout this Order as does PAWC's Petition for Expedited Reconsideration. Petition at ¶ 1.

the enactment consistent with supplemental information filed on February 8, 2022, and (b) a copy of the Pennsylvania Department of Environmental Protection's (DEP) approved Act 537 Official Sewage Facilities Plan update for Foster Township to reflect the change of ownership of Foster Township's wastewater assets to PAWC. The Commission also provided, in Ordering Paragraph 3 that, upon meeting the conditions of Ordering Paragraph 2, a certificate of public convenience would be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of PAWC to acquire certain wastewater system assets from Foster Township. Order at 23-24; *see also* Order at 21-22.

Additionally, in Ordering Paragraph 7, the Commission directed that, within 60 days of the entry of the July 14 Order, PAWC file a report with the Commission addressing the violations indicated by the DEP at its Saw Creeks Wastewater Treatment and Lake Scranton Water Filter Plants, including the current status of completing any approved corrective action. Order at 25; *see also* Order at 23.

Further, in Ordering Paragraph 10, the Commission directed that, at the time of filing its next base rate case that proposes to include the assets of the acquisition in rate base, PAWC shall provide testimony justifying any amount claimed in rate base in order to evaluate the reasonableness of the original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Public Utility Code, 66 Pa.C.S. § 1327. Order at 26; *see also* Order at 8.

PAWC filed the instant Petition with the Commission on July 29, 2022. On August 3, 2022, PAWC filed (a) a copy of Foster Township's adopted Ordinance Number 2 of 2022 establishing an Industrial Pretreatment Program and Other Rules Controlling Discharges to the Sewer System, and (b) a copy of the DEP's Approval Letter – Official Plan Update Revision – Act 537 Official Sewage Facilities Plan update for Foster Township to reflect the change of ownership of Foster Township's wastewater

assets to PAWC. Subsequently, on August 4, 2022, PAWC filed a copy of its Act 537 Plan Update as submitted by Entech Engineering, Inc. to the DEP.

Also, on August 4, 2022, the Commission granted PAWC's Petition pending review of, and consideration on, the merits. Foster Township filed a letter in support of PAWC's Petition on August 5, 2022.

On August 8, 2022, in accordance with Ordering Paragraph 3 of the Commission's July 14 Order, the Commission issued a Certificate of Public Convenience evidencing the right of PAWC to acquire certain wastewater system assets from Foster Township.

## **DISCUSSION**

We note that any issues we do not specifically address herein have been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### **Legal Standards**

Following the issuance of a final decision, relief may be sought pursuant to Sections 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. § 703(f)-(g), relating to rehearings as well as the rescission and amendment of orders. Requests for such relief must comply with Section 5.572 of the Commission's regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a petition for reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1982) (*Duick*):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this Code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . .” *What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the commission.* Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

*Id.* at 559 (emphasis added). Under the standards of *Duick*, a petition for reconsideration is likely to succeed only when it raises “new and novel arguments” not previously heard by the Commission or considerations which appear to have been overlooked or not addressed by the Commission. *Id.*

The Commission has administrative discretion regarding whether to grant or deny a petition for reconsideration of an order filed under Section 703(g). *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). Such a petition, however, should only be granted judiciously and under appropriate circumstances, because such action results in the disturbance of a final order. *Id.* (citing *City of Pittsburgh v. Pa. Dep’t of Transportation*, 416 A.2d 461 (Pa. 1980)).

### **PAWC Petition for Reconsideration**

On July 29, 2022, pursuant to Section 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g), PAWC filed its Petition seeking expedited reconsideration of the Commission’s July 14 Order. PAWC claims that its Petition meets the standards of *Duick* because the Commission committed clear errors of law. Petition at ¶ 13.

In its Petition, PAWC requests that the Commission (1) acknowledge that PAWC had a procedural due process right to be informed of and an opportunity to respond to potential approval conditions before the Commission entered the July 14 Order, (2) delete Ordering Paragraph 7, (3) modify Ordering Paragraph 2, (4) clarify the requirements of Ordering Paragraph 10, and (5) issue a certificate of public convenience immediately upon the Commission's entry of an order on reconsideration. PAWC also requests expedited consideration of its Petition. Petition at Page 13.

First, PAWC claims that the Commission violated PAWC's procedural due process rights by failing to give notice and an opportunity to be heard on the conditions of the Commission's approval of its Application. PAWC argues that the Commission's Bureau of Technical Utility Services (TUS) did not inform PAWC of some of the proposed conditions for approval or afford PAWC an opportunity to make arguments and submit evidence on why certain conditions may or may not be appropriate. In particular, PAWC claims it had no notice of, or opportunity to respond to, a DEP e-mail regarding alleged violations of National Pollution Discharge Elimination System (NPDES) permits at two locations. PAWC's claim regarding notice and due process relates to Ordering Paragraph 7 of the Commission's July 14 Order, which requires PAWC to file a report within 60 days of the entry of the July 14 Order addressing violations that the DEP identified at the Saw Creeks Wastewater Treatment Plant and the Lake Scranton Water Filter Plant. PAWC also notes that TUS's data requests to PAWC did not seek information regarding the Saw Creek Plant and Lake Scranton Plant. Petition at ¶ 13, 14-18.

With regard to Ordering Paragraph 7, PAWC claims that the Commission lacks authority to require a utility to create and file an environmental report pertaining to a matter which is subject to the jurisdiction of a different regulatory agency, and that the inclusion of the environmental reporting requirement exceeds the proper scope of Commission review in this application proceeding which is limited to whether PAWC is

legally, financially, and technically fit to own and operate the assets and whether the acquisition will result in an affirmative public benefit of a substantial nature. PAWC argues that the Commission should not require PAWC to create another report about the NPEDS violations. PAWC asserts that a certificated utility is presumed to be fit and that the DEP violations do not call into question its technical or legal fitness to acquire the Foster Township system and its good record on environmental compliance. PAWC argues that the Commission should have addressed the matter in data requests, rather than including a condition on approval in the July 14 Order. Thus, PAWC requests that the Commission delete Ordering Paragraph 7. Petition at ¶ 19 n. 2, ¶ 20.

Next, PAWC questions Ordering Paragraph 2 of the Commission's July 14 Order, which also imposes a condition on the issuance of a certificate by requiring the filing of two documents – one related to the filing of a Foster Township Ordinance establishing an Industrial Pretreatment Program and Rules Controlling Discharges to the Sewer System and one related to DEP's approval of an updated Act 537 Official Sewage Facilities Plan update for Foster Township reflecting the change in ownership of the wastewater system. PAWC objects to the imposition of this condition, arguing that the condition could unnecessarily delay closing. PAWC also notes that, as a practical matter, there is a difference between conditions to approval and mere compliance filings due before closing. PAWC requests that the Commission to modify Ordering Paragraph 2 to make the provision of these documents a condition prior to closing rather than a condition precedent to the issuance of a certificate. Petition at ¶ 21-23.

Finally, PAWC seeks reconsideration of Ordering Paragraph 10 of the July 14 Order, which requires PAWC to include certain items in its next base rate case that proposes to include the assets of this acquisition, including testimony justifying the amount claimed in rate base. PAWC asserts that the Commission overlooked the fact that PAWC already included the Foster Township system in its pending rate case at Docket Nos. R-2022-3031672 and R-2022-3031673, and that PAWC's rate filing

included most of the requirements of this Ordering Paragraph. PAWC acknowledges that the information required by Ordering Paragraph 10 is appropriate for the initial rate case that includes the acquisition assets but argues that it has little value in subsequent rate cases. Thus, PAWC requests that the Commission modify Ordering Paragraph 10 to make clear that the requirements of this Paragraph apply to the first rate base case, which has already been filed, and do not apply to PAWC's next base rate case. Petition at ¶¶ 24-27.

### **Foster Township Letter in Support**

On August 5, 2022, Foster Township filed a Letter in Support of PAWC's Petition. Foster Township asserts that the conditions included in the July 14 Order will cause an unexpected delay, or even termination, of the sale of its system to PAWC. Foster Township alleges that the conditions are unrelated to the transaction for which approval is sought. Foster Township argues that the Commission should address these concerns at a different docket. Foster Township explains that the negotiated terms of the sale assumed closing would occur by the end of 2021 and that this assumption was reflected in the purchase price and rate freeze scheduled to end on December 31, 2024. Foster Township asserts that it continues to pay on a Pennsylvania Infrastructure Investment Authority, PENNVEST, loan and will consider renegotiating the terms of sale with PAWC if the closing is further delayed. Letter at 1.

### **Disposition**

First, we find that the Commission's July 14 Order did not violate PAWC's due process rights as PAWC claims. Section 1103 of the Public Utility Code, 66 Pa.C.S. § 1103, which governs the procedure to obtain certificates of public convenience, does not require the Commission to conduct a hearing on every application for a certificate of public convenience. Rather, Section 1103 provides that the Commission "shall hold such hearings . . . as it may deem necessary and proper in enabling it to reach a finding or determination." 66 Pa.C.S. 1103(b). In this regard, the Commonwealth Court has held

that Section 1103 “does not require the Commission to hold a hearing on every application for a certificate of public convenience.” *Chester Water Authority v. Pa. Pub. Util. Comm’n*, 868 A.2d 384, 391 (Pa. 2005). While due process concerns implicating hearings could arise during certification proceedings, the act of regulatory approval itself is *not* the type of government activity that inherently requires a hearing to comport with the constitutional doctrine. *Id.* Constitutional procedural due process is a flexible concept and is to be applied as each situation demands. *Id.* (citing *Burger v. Board of Sch. Dirs. Of McGuffey Sch. Dist.*, 839 A.2d 1055, 1062 (Pa. 2003)).

The circumstances of the instant case did not necessitate that the Commission conduct a hearing on PAWC’s Application. As the Commonwealth Court has generally maintained, when there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003); *Cresco, Inc. v. Pa. Pub. Util. Comm’n*, 622 A.2d 997, 1000 (Pa. Cmwlth. 1993). Thus, the Commission did not err in granting PAWC’s *uncontested* Application without a hearing, and reconsideration of the Commission’s July 14 Order on due process grounds is not warranted. *See Chester Water Authority* at 393 (there is no abuse of Commission discretion in granting a certificate of public convenience without a hearing where the uncontested application was sufficient to reflect a demand and need for the service, the inadequacy of existing facilities, and technical, financial, and legal fitness).

We likewise find that PAWC’s claim that it had no notice of, or opportunity to respond to, the requirement of Ordering Paragraph 7 of the Commission’s July 14 Order is unpersuasive as a basis for reconsideration. PAWC asserts that it had no notice of DEP’s e-mail regarding PAWC’s alleged NPEDS violations at two locations and should have been provided an opportunity to respond to the contents of the e-mail before the Commission. PAWC also complains that the Commission imposed the condition of filing a report regarding the DEP violations as part of its grant of PAWC’s Application.

The Commission, however, in granting a certificate of public convenience, may impose such conditions as it deems just and reasonable. The Commission has great latitude when determining conditions imposed on the award of a certificate of public convenience. *Rheems Water Co. v. Pa. Pub. Util. Comm'n*, 620 A.2d 609, 611 (Pa. Cmwlth. 1993). In addition, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a), the holder of a certificate of public convenience shall be deemed to have waived any and all objections to the terms and conditions of such certificate. Accordingly, PAWC waived any and all objections to the terms and conditions of the certificate. PAWC cannot now complain regarding the condition set forth in Ordering Paragraph 7 of the Commission's July 14 Order approving its Application for a certificate. *See Twin Lakes Utils. v. Pa. Pub. Util. Comm'n*, 2022 Pa. Commw. LEXIS 109 at \*25-27 (Pa. Cmwlth. 2022). Thus, the Commission did not deprive PAWC of due process simply by directing the filing of a report regarding the DEP violations.<sup>2</sup>

Additionally, we find that the requirement imposed by Ordering Paragraph 7 is within the Commission's authority and scope of review. The legislature has conferred upon the Commission the broadest of discretionary powers in certificate of public convenience matters. 66 Pa.C.S. § 1103(a), (c). Since the Commission is the agency charged with administration of the scheme of public utility regulation, and considering its specialized expertise, its judgments concerning weight and balancing of associated policy considerations connected with utility certification are given considerable deference. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1059 (Pa. 2007). The Commission is charged with the responsibility to conduct a state-specific determination of public benefit. Ancillary state findings that are rationally and reasonably complementary to this determination may be considered. *Id.* at 1060. Here, the Commission conducted a state-specific determination of public benefit in which it was able to rely upon ancillary

---

<sup>2</sup> Even so, the Commonwealth Court has held that a party is afforded due process as required by law when it has an opportunity on reconsideration before the Commission to present its objections to issues raised in a Commission determination. *Dee-Dee Cab, Inc.* at 598.

state findings that would be complementary to its determination. The Commission did not rely on any of the specific findings made by DEP in its decision to grant PAWC's Application. Rather, the Commission appropriately acknowledged the existence of the DEP violations and directed the filing of additional information addressing the violations.

Moreover, we note that the Commission has general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. 66 Pa.C.S. § 501(b). This broad power includes the regulation of the adequacy, safety, and reasonableness of utility service and facilities.<sup>3</sup> The Commission is also authorized to require any public utility to file special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce. 66 Pa.C.S. § 504. As the Commonwealth agency charged with the regulation of water service, the Commission's inquiry into the circumstances surrounding the DEP violations is well within the Commission's authority to regulate public utility services and ensure safe and reliable water and wastewater service.

Additionally, the Commission is not requiring PAWC to create and file a new report as PAWC claims. Ordering Paragraph 7 simply refers to "a report . . . addressing the violations." Order at 25. Thus, PAWC is not required to create a new report and may satisfy the requirements of Ordering Paragraph 7 by providing a copy of what it has filed with DEP. Therefore, Ordering Paragraph 7 does not exceed the scope of the Commission's authority and PAWC's claims regarding this Ordering Paragraph do not warrant reconsideration of the Commission's July 14 Order.

---

<sup>3</sup> Pursuant to Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, the Commission must ensure that a public utility furnishes and maintains adequate, efficient, safe, and reasonable service and facilities and makes all repairs, changes, alterations, substitutions, extensions, and improvements as may be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. For example, the Commission's regulations require that water plants be designed and constructed so as to provide reasonably adequate and safe service to customers and conform to the requirements of the DEP concerning sanitation and potability of water. 52 Pa. Code § 65.17(a), 65.18(a).

Finally, we note that, since the filing of the instant Petition, the Commission issued a Certificate of Public Convenience (CPC) evidencing the right of PAWC to acquire certain wastewater system assets from Foster Township on August 8, 2022. Given that the CPC has been issued to PAWC, PAWC's request that the Commission issue a CPC immediately upon entry of an order on reconsideration is now moot.

However, regarding PAWC's request that the Commission modify Ordering Paragraph 2 of our July 14 Order, requiring an updated Act 537 Official Sewage Facilities Plan and a copy of Foster Township's adopted Ordinance establishing an Industrial Pretreatment Program and Other Rules Controlling Discharges to the Sewer System, to be a condition of closing rather than a condition of obtaining a certificate of public convenience, we believe that further discussion is warranted. On December 16, 2021, at Docket No. L-2020-3017232, the Commission entered a Notice of Proposed Rulemaking Order regarding the *Application of 52 Pa. Code § 3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers, and Transfers* (Proposed Rulemaking Order). The Proposed Rulemaking Order includes amendments to streamline some requirements for established utilities during the process of acquisition of another water or wastewater service provider. Specifically, in the Proposed Rulemaking Order, the Commission proposed to require the submission of Act 537 Plans, *to the extent applicable*, so long as the Commission does not have ready access to this information through other means.<sup>4</sup> Additionally, neither the current language of 52 Pa. Code § 3.501 nor language in the Proposed Rulemaking Order require the submission of a pretreatment program and discharge ordinance as a condition to receiving a CPC. Given the Commission's goals of regionalization and consolidation,<sup>5</sup> well-established utility companies should be given flexibility during the acquisition process. As such, Ordering Paragraph 2 of our July 14 Order could have been modified to require PAWC's filing of an Act 537 Plan and Foster Township's pretreatment program and discharge ordinance as

---

<sup>4</sup> See Annex Section 3.502(b)(7)(v).

<sup>5</sup> 52 Pa. Code § 69.701 (Commission's general policy statement on the viability of small water systems).

a condition to closing rather than as a condition of obtaining a CPC. However, as a CPC has already been issued in this matter, this issue is now moot.

Regarding PAWC's claim that Ordering Paragraph 10 must be modified to reflect that PAWC has already filed a base rate case that includes the assets of this acquisition at Docket No. R-2022-3031672 (water) and R-2022-3031673 (wastewater), we find that Ordering Paragraph 10 requires clarification. Ordering Paragraph 10 should apply to PAWC's first base rate case that proposes to include the assets of this acquisition in rate base, rather than its next base rate case and should not include a requirement that further testimony be filed.

### **CONCLUSION**

For the reasons set forth above, the Commission hereby grants in part and denies in part PAWC's Petition for Expedited Reconsideration of our July 14 Order granting the Application of PAWC for approval of the right to: (1) acquire certain wastewater system assets from Foster Township; and (2) begin to offer, render, furnish or supply wastewater service to the public in portions of Foster Township, Luzerne County, Pennsylvania;

**THEREFORE,**

### **IT IS ORDERED:**

1. That Pennsylvania-American Water Company's Petition for Expedited Reconsideration is hereby granted in part and denied in part, consistent with this Order.
2. That Ordering Paragraph 10 of the Order entered on July 14, 2022, at Docket No. A-2021-3028676, is modified to read:

That, at the time of filing its first base rate case that proposes to include the assets of this acquisition in rate base, Pennsylvania-American Water Company – Wastewater

Division shall, specifically referencing Docket No. A-2021-3028676, justify any amount claimed in rate base in order to evaluate the reasonableness of the original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1327.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 15, 2022

ORDER ENTERED: October 4, 2022