

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Application of Pennsylvania-American Water Company for Approval of the Right to Offer, Render, Furnish and Supply Wastewater Treatment Service to the Public in an Additional Portion of Elk Township, Clarion County, Pennsylvania **Public Meeting held January 12, 2023**
3030364-OSA
Docket No. A-2022-3030364

MOTION OF COMMISSIONER RALPH V. YANORA

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition is the Petition for Reconsideration (Petition) filed by the Pennsylvania-American Water Company (PAWC or Company). The Petition seeks reconsideration of our August 25, 2022 Order (*August 2022 Order*) granting the Application of PAWC (Application) for approval of the right to offer, render, furnish, or supply wastewater service to the public in an additional portion of Elk Township, Clarion County. In addition to granting the Application, the *August 2022 Order* directed PAWC to file a report with the Commission, within sixty days following entry of that Order, addressing violations indicated by the Pennsylvania Department of Environmental Protection (DEP) at three separate plants, one wastewater and two water, operated by PAWC. This requirement was allegedly based upon an undocketed extra-record e-mail dated January 26, 2022, from DEP’s Northwest Regional Office (DEP e-mail) that advised Commission Staff that PAWC is in violation of National Pollutant Discharge Elimination System (NPDES) Permit Nos. PA0060640 (Saw Creek Wastewater Treatment Plant, Pike County), PA0061646 (Lake Scranton Water Filter Plant, Lackawanna County), and PA0244775 (Norristown Water Treatment Plant, Montgomery County).¹

In its Petition, PAWC claims that reconsideration of this reporting requirement regarding three of the Company’s separate plants is warranted because: (1) the Commission violated PAWC’s procedural due process rights by failing to give notice and an opportunity to be heard on the DEP’s e-mail regarding an alleged violation of a NPDES permit for an unrelated treatment plant; (2) the Commission imposed an environmental reporting condition on its approval that is beyond the scope of the Commission’s statutory authority; and (3) the Commission imposed an environmental reporting condition that exceeds the Commission’s limited scope of review for an application under 66 Pa. C.S. §§ 1102 and 1103 and is not based upon substantial evidence of record. As relief, PAWC requests that the Commission delete Ordering Paragraph No. 3 at page 9 of the *August 2022 Order*, which requires PAWC to file a report within sixty days of entry of that Order, addressing alleged violations that DEP identified at PAWC’s Norristown, Saw Creek, and Lake Scranton plants.

¹ *August 2022 Order* at 7-8.

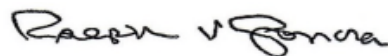
I agree with PAWC that reconsideration of our *August 2022 Order* is warranted under the *Duick* standard and that Ordering Paragraph No. 3 should be deleted. Specifically, I agree with PAWC that the reporting requirement set forth in Ordering Paragraph No. 3 is not based upon substantial evidence of record.² The Commission's scope of review in an application proceeding considers whether the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public under 66 Pa. C.S. § 1103(a). As a certificated public utility, PAWC is presumed to be fit and there is no evidence in the record to suggest that the alleged environmental incidents identified in the DEP e-mail are sufficient to overcome a presumption of PAWC's fitness such that an environmental reporting requirement is necessary. Given that Ordering Paragraph No. 3 was not based on substantial evidence, I find it unnecessary to address the remaining two claims made by PAWC.³

Further, I point out that the Norristown, Saw Creek, and Lake Scranton plants are unrelated to PAWC's wastewater operations in the instant Application regarding Elk Township operations in Clarion County. While the Commission is authorized to require any public utility to file special reports under 66 Pa. C.S. § 504, the inclusion of an unrelated reporting requirement is misplaced in the instant uncontested Application proceeding. If the Commission desires additional information regarding the Norristown, Saw Creek, and Lake Scranton plants, the Commission's Bureau of Technical Utility Services is permitted to submit separate data requests to PAWC and to make appropriate referrals for investigation regarding any alleged DEP violations related to these plants.

THEREFORE, I MOVE THAT:

1. The Petition for Reconsideration filed by Pennsylvania-American Water Company on August 31, 2022, is granted in part, and denied in part.
2. That Ordering Paragraph No. 3 of our Opinion and Order entered on August 25, 2022, at Docket No. A-2022-3030364, is deleted.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: January 12, 2023



Ralph V. Yanora, Commissioner

² I note that the reporting requirement in Ordering Paragraph No. 3 of our *August 2022 Order* was not a condition to PAWC obtaining a Certificate of Public Convenience (CPC) in the instant Application. Additionally, PAWC timely filed its Petition regarding this reporting requirement. As such, PAWC did not waive its objections to Ordering Paragraph No. 3 of the *August 2022 Order* by accepting its CPC in the Application matter.

³ *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993).