

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Application of Pennsylvania-American Water Company - Wastewater Division 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, Pennsylvania

**Public Meeting – January 12, 2023
3030364-TUS
Docket No. A-2022-3030364**

**JOINT STATEMENT OF CHAIRMAN GLADYS BROWN DUTRIEUILLE
AND COMMISSIONER KATHRYN L. ZERFUSS**

By Opinion and Order entered on August 25, 2022, the Commission approved Pennsylvania American Water Company’s (PAWC) Application which sought the right to supply wastewater treatment service in an additional portion of Elk Township, Clarion County.

In addition to granting PAWC’s Application, the Commission, pursuant to 66 Pa. C.S. §§ 501, 504 and 1103(a), directed PAWC to file a report with the Commission, within sixty days following entry of the August 2022 Order, addressing violations indicated by the Pennsylvania Department of Environmental Protection (DEP) at PAWC’s Norristown Water Treatment Plant and the current status of completing any approved corrective actions. This action was based upon an 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 Creeks Wastewater Treatment Plant), PA0061646 (Lake Scranton Water Filter Plant), and PA0244775 (Norristown Water Treatment Plant). August 2022 Order at 7-8.

PAWC claims that reconsideration of this reporting requirement regarding the Norristown plant is warranted because:

1. PAWC’s procedural due process rights were violated in this proceeding because it had no notice of, or opportunity to comment on, the Pennsylvania Department of Environmental Protection’s (DEP) email regarding an alleged violation of a National Pollutant Discharge Elimination System (“NPDES”) permit for an unrelated water treatment plant;
2. PAWC disputes the Commission’s authority to require a utility to create a report pertaining to a matter subject to the jurisdiction of another regulatory agency; and
3. The Commission’s scope of review in this application proceeding is limited to whether PAWC is legally, financially, and technically fit to obtain a certificate of public convenience. PAWC, as a certificated public utility, is presumed to be fit and there is no evidence in the record to suggest that the alleged environmental incidents identified in the

DEP email are sufficient to overcome a presumption of PAWC's fitness such that an environmental reporting requirement condition is necessary for Commission approval. PAWC met the standard for approval of its application without conditions and, therefore, reconsideration should be granted.

We disagree with PAWC's claims for a number of reasons. First, there was no procedural due process violation here because it is clear from the Commission's unconditional grant of PAWC's Application on August 25, 2022, that the DEP information sought by the Commission was not, in this case, utilized to support either the grant or denial of the Application. Because PAWC's Application was not contested it was disposed of without an evidentiary hearing.¹

Second, Commission review of Certificate of Public Convenience (CPC) applications is broad and encompasses whether the granting of any certificate is necessary or proper for the service, accommodation, convenience, or safety of the public under 66 Pa. C.S. § 1103(a). The Commission routinely reviews whether CPC applicants have complied with other pertinent state agency requirements. For water companies, the Commission does not regulate water quality; therefore, if necessary, the Commission is within its rights under Sections 1102 and 1103 of the Public Utility Code to base a determination on pertinent information from the appropriate regulatory authority, DEP. If the Commission had chosen to rely on the report of a sister agency regarding legal compliance with Commonwealth law under that agency's jurisdiction, we could have done so if the information relied upon was properly documented at this docket.² The Commission did not rely on any 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. PAWC was not disadvantaged by the request to provide additional information. As stated above, a CPC was issued on August 25, 2022.

Finally, we turn to PAWC's argument which seeks to limit the Commission's scope of review when considering the application of an existing utility seeking to expand its service territory. The legislature has conferred upon the Commission the broadest of discretionary powers in Certificate 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. PUC*, 937 A.2d 1040, 1059 (Pa. 2007). 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. "Notably, Chapter 11 has endowed the PUC with the authority to impose conditions upon a certificate of public convenience "as it may deem to be just and

¹ The PA Supreme 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. PUC*, 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.*

² 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. *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1060 (Pa. 2007).

reasonable," and "[a]ny 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." 66 Pa. C.S. §1103(a)." *Twin Lakes Utils. v. Pa. PUC*, 281 A. 3d 384, 390 (Pa. Cmwlth. 2022).

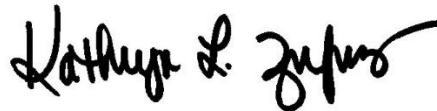
The Commission is also authorized to require any public utility to file special reports concerning any matter whatsoever about which the Commission is authorized to inquire, or to keep itself informed, or which it is required to enforce. 66 Pa. C.S. § 504. The Commission is not requiring PAWC to create and file a new report as PAWC claims. Rather, Ordering Paragraph No. 3 of the August 2022 Order simply refers to "a report . . . addressing the violations." August 2022 Order at 9. Thus, PAWC is not required to create a new report and may satisfy the requirements of Ordering Paragraph No. 3 of the August 2022 Order by providing a copy of what it has filed with DEP.

It should also be noted that the subject of DEP violations was previously addressed in the Commission Order approving the application of PAWC to acquire the wastewater system from Foster Township (A-2021-3028676, Order entered July 14, 2022). That order included the identical discussion regarding DEP's notification to the Commission regarding violations against the Saw Creeks WWTP and the Lake Scranton Water Filter Plant, as well as an ordering paragraph directing PAWC to provide a report to the Commission addressing the DEP violations. PAWC's Petition for Reconsideration arguing the same points it argues here, was denied by order entered October 4, 2022.

Accordingly, we see no compelling reason to deviate from precedent by granting the Petition for Reconsideration.



Gladys Brown Dutrieuille
Chairman



Kathryn L. Zeffuss
Commissioner

DATE: January 12, 2023