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July 7, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Docket No. A-2022-3037047 – Application of Pennsylvania-American
Water Company to Acquire the Wastewater System Assets of the Butler
Area Sewer Authority**

Dear Secretary Chiavetta:

We are counsel to the City of Butler (the “City”) in the above matter, and are submitting, with this letter, the City’s Pre-hearing memorandum.

This document is being served via electronic mail on all parties of record, unless otherwise indicated on the Certificate of Service. The document was also filed electronically with the Public Utility Commission on this date.

Very truly yours,

Sydney N. Melillo

CC: All parties of record
Thomas S. Wyatt, Esq. (Thomas.wyatt@obermayer.com)
Matthew S. Olesh, Esq. (matthew.olesh@obermayer.com)

CERTIFICATE OF SERVICE

I, Sydney N. Melillo, Esq., hereby certify that I have served a true and correct copy of the foregoing document upon the following parties:

By Electronic Mail:

The Honorable Administrative Law Judge Marta Guhl
Pennsylvania Public Utility Commission
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/s/ Sydney N. Melillo

Dated: July 7, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :
Company under Section 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), : Docket No. A-2022-3037047
for approval of (1) the transfer, by sale, of substantially :
all of the assets, properties and rights related to its :
wastewater collection and treatment system owned by :
the Butler Area Sewer Authority, and (2) the rights of :
Pennsylvania-American Water Company to begin to :
offer or furnish wastewater service to the public in the :
City of Butler, portions of East Butler, and portions of :
the Townships of Butler, Center, Connequenessing, :
Oakland and Summit, in Butler County, Pennsylvania ;

PREHEARING MEMORANDUM OF THE CITY OF BUTLER

The City of Butler (the “City”), by and through its attorneys, Obermayer Rebmann Maxwell & Hippel LLP, submits this prehearing memorandum pursuant to the Prehearing Conference Order in advance of the telephonic prehearing conference scheduled for Tuesday, July 11, 2023 in the above-captioned matter.

I. Background

These proceedings concern the application of Pennsylvania-American Water Company (“Pennsylvania-American”) for approval to acquire the wastewater collection and treatment system of Butler Area Sewer Authority (“BASA” or the “Authority”) pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (the “Application”).

By Secretarial Letter dated April 10, 2023, the Public Utility Commission (the “Commission”) conditionally accepted Pennsylvania-American’s Application. On May 23, 2023, the Commission, by Secretarial Letter, finally accepted the Application for filing and assigned Administrative Law Judge Marta Guhl to preside over the proceeding.

An initial telephonic prehearing conference for Pennsylvania-American’s Application was scheduled for Tuesday, July 11, 2023. Additionally, pursuant to the Prehearing Conference Order issued by Judge Guhl, all parties must file and serve their prehearing memoranda on or before 12:00 p.m. Friday, July 7, 2023.

On May 30, 2023, the City filed its Petition to Intervene to adequately address the interests of the City in this proceeding. No objections have been filed, so that Petition to Intervene is deemed granted. Consequently, the City submits this prehearing memorandum.

II. Issues

A. Approval of Application

Issue: Should the Commission approve Pennsylvania-American’s Application to (i) acquire the wastewater system assets of BASA and (ii) begin to offer, render, or furnish wastewater service to the public in the City of Butler, portions of East Butler, and portions of the Townships of Butler, Center, Connequenessing, Oakland and Summit, in Butler County, Pennsylvania (the “Service Area”)?

The City’s Position: The Commission should issue a Certificate of Public Convenience approving the acquisition because Pennsylvania-American’s acquisition of the Authority’s wastewater system assets is necessary or proper for the service, accommodation, convenience or safety of the public.

B. Ratemaking Rate Base

Issue: Pursuant to Section 1329 of the Code, what is the ratemaking rate base of the wastewater system assets of the Authority?

The City's Position: Pursuant to Section 1329 of the Code, Pennsylvania-American shall be permitted to use \$231,500,000 for ratemaking rate base purposes for the acquired wastewater system assets.

C. Validity of Contracts

Issue: Pursuant to Section 507 of the Code, are the municipal agreements that will be assumed by Pennsylvania-American, and the Asset Purchase Agreement dated October 11, 2022 between Pennsylvania-American and BASA valid, reasonable, and otherwise lawful?

The City's Position: Yes. The municipal agreements and the Asset Purchase Agreement dated October 11, 2022 between Pennsylvania-American and BASA are valid, reasonable, and otherwise lawful under Section 507 of the Code.

D. Jurisdictional Issues

Issue: Pursuant to Pennsylvania precedent, are any and all claims related to private contracts such as the Water Pollution Control Agreement, attached to Pennsylvania-American's Application as Appendix A-25.1, properly before the Commission?

The City's Position: No. It is well-settled precedent that the Commission's remedial and enforcement powers do not include the power to adjudicate private contractual disputes, including but not limited to, the authority to interpret terms and conditions of a contract or to determine whether a breach of contract has occurred. *See Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977); *see also Application of Pennsylvania-American Water Company to acquire the wastewater system assets of Exeter Township*, Docket No. A-2018-3004933 (Opinion and Order entered Oct. 3, 2019) (dismissing a municipality's claims seeking the Commission's adjudication of a private contractual dispute for lack of jurisdiction).

III. Settlement

The City is willing to address settlement of all or part of this proceeding with the other parties.

V. Witnesses and Remote Participation Request

PAWC filed written direct testimony from the following City witness with its Application:

Robert A. Dandoy
Mayor of the City of Butler
140 West North Street
Butler, PA 16001

However, the City respectfully reserves its right to call additional witnesses, if necessary, and agrees to notify Judge Guhl and the parties promptly should the City determine that any additional witnesses must be called. Furthermore, should the Evidentiary Hearing take place in-person, the City respectfully requests that Mayor Dandoy be permitted to testify remotely.

VI. Litigation Schedule

In accordance with the Prehearing Conference Order, p. 5, the parties will jointly propose a litigation schedule prior to the Prehearing Conference.

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Respectfully submitted,

/s/ Thomas Wyatt

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Dated: July 7, 2023