



MICHAEL D. GALLAGHER
SEAN M. GALLAGHER

www.gallagher.legal

attys@gallagher.legal

110 East Diamond Street, Suite 101
Butler, Pennsylvania 16001
Phone: 724-282-3141
Fax: 724-282-7378

July 7, 2023

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

RE: *Application of Pennsylvania-American Water Co. under Section 1102(a) and 1329 of the Pennsylvania Public Utility Code to acquire the wastewater collection and treatment system owned by the Butler Area Sewer Authority and to furnish wastewater service to the public in Butler County, Pennsylvania*
Docket No.: A-2022-3037047

Dear Secretary Chiavetta:

Attached for electronic filing please find the Prehearing Memorandum of Center Township, Butler County, Pennsylvania.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael D. Gallagher", is written over a horizontal line.

Michael D. Gallagher, Esquire
PA I.D. No. 59237
Sean M. Gallagher, Esquire
PA I.D. No. 318872
attys@gallagher.legal

MDG:mt
Enclosure

cc: Center Township Supervisors (*by email*)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American :
Water Co. under Section 1102(a) and :
1329 of the Pennsylvania Public Utility :
Code to acquire the wastewater collection : Docket No. A-2022-3037047
and treatment system owned by the Butler :
Area Sewer Authority and to furnish :
wastewater service to the public in Butler :
County, Pennsylvania :

**PREHEARING MEMORANDUM OF
CENTER TOWNSHIP, BUTLER COUNTY, PENNSYLVANIA**

In accordance with Administrative Law Judge, Marta Guhl's, Prehearing Conference Order dated June 27, 2023, and 52 Pa. Code § 5.222(d), Center Township hereby submits this Prehearing Memorandum as follows:

Procedural History: On or about February 3, 2023, Pennsylvania American Water Company ("PAWC") filed an application for the acquisition of Butler Area Sewer Authority's ("BASA") assets, properties and rights. The net result of the purchase would result in a near doubling of water rates paid by the current "typical" users of the BASA system. On June 30, 2023, Center Township, which comprises 12.8% of the BASA system, filed a Protest seeking for the PUC to deny the sale as detrimental to the public at large, including the residents, industries, and businesses located in Center Township.

Issues: Center Township intends to address the following issues.

a. The acquisition of BASA's assets and contracts by PAWC would not provide an affirmative benefit to the public, but rather it would be detrimental to the public including the residents, industries and businesses located within Center Township, in violation of the standards enunciated by the courts in *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (the Public Utility Code "requires that the proponents of a merger demonstrate that the merger will affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way") and *McCloskey v. Pa PUC*, 195 A.3d 1055 (Commw. Ct. 2018), appeal denied, 207 A.3d 290 (Pa. 2019);

b. A future fee increase to the users of the BASA system of nearly 100%, is neither reasonable nor lawful, as set forth in the Protest of the Office of Consumer Advocate, which is adopted by Center Township, as though set forth herein at length;

c. BASA does not have the contractual right to transfer its assets to PAWC without the advice and consent of Center Township, which consent has not been given;

d. It is not consistent with the public convenience and necessity for PAWC to acquire the assets of BASA, in violation of 66 Pa. C.S. § 1101, *et seq.*;

e. It is unconscionable to use the sale of BASA's assets as a piggy bank for the sole use of the City of Butler and Butler Township;

f. The currently metered BASA customers have no rate provided for them in the proposed tariff or Asset Purchase Agreement and, as such, their costs will have to be defrayed by the entire system, including Center Township;

g. The proposed metering of customers constitutes a greater increase in customer rates, potentially beyond the doubling as anticipated by the Office of Consumer Advocate; and

h. The rate will not only increase by double, but over time, will greatly exceed any cost increase that BASA would impose over a similar period of time.

Witnesses: Center Township intends to provide written direct testimony from the following witnesses:

<u>Witness</u>	<u>Proposed testimony</u>
Donald Pringle Center Township Supervisor 150 Hendricks Road Butler, PA 16001	a.-h.*
Willie Adams Summit Township Supervisor 502 Bonniebrook Road Butler, PA 16002	a.-h.*

*Issues listed in the preceding subsection.

Proposed Scheduling Order: Center Township submits the following

Proposed Scheduling Order:

Prehearing Conference	-	July 11, 2023
Direct Testimony	-	July 14, 2023
Rebuttal Testimony	-	July 20, 2023
Surrebuttal Testimony	-	July 25, 2023

Evidentiary Hearings - July 27-28, 2023
Receipt of Transcript - July 31, 2023
Main Briefs - August 7, 2023

Service List: Center Township requests that its entry on the service list should be for its Solicitor, as follows:

GALLAGHER LAW GROUP
Michael D. Gallagher, Esquire
Sean M. Gallagher, Esquire
110 East Diamond Street, Suite 101
Butler, Pennsylvania 16001
Phone: (724) 282-3141
Fax: (724) 282-7378
Email: attys@gallagher.legal

Pursuant to 52 Pa. Code § 1.54(b)(3), counsel consents to the electronic service of all documents at the email address shown above.

Settlement: Center Township is willing to discuss settlement PAWC, BASA, and the proposed intervenors, Butler Township, and the City of Butler.

Respectfully submitted,

GALLAGHER LAW GROUP



Michael D. Gallagher, Esquire
PA I.D. No. 59237
Sean M. Gallagher, Esquire
PA I.D. No. 318872

*Solicitors for Center Township,
Butler County, Pennsylvania*

110 East Diamond Street, Suite 101
Butler, Pennsylvania 16001
(724) 282-3141

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American Water Co. under Section 1102(a) and 1329 of the Pennsylvania Public Utility Code to acquire the wastewater collection and treatment system owned by the Butler Area Sewer Authority and to furnish wastewater service to the public in Butler County, Pennsylvania :
:
:
: Docket No. A-2022-3037047
:
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of July, 2023 served a true copy of the foregoing Prehearing Memorandum of Center Township, Butler County, Pennsylvania upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ON JULY 7, 2023

Administrative Law Judge Marta Guhl
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
mguhl@pa.gov
sdelvillar@pa.gov

Patrick M. Cicero, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101
pcicero@paoca.org

Elizabeth Rose Triscari, Esquire
Erin K. Fure, Esquire
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Elizabeth.triscari@amwater.com
erin.fure@amwater.com

David P. Zambito, Esquire
Jonathan Nase, Esquire
Cozen O'Connor
17 North Second St., Suite 1410
dzambito@cozen.com
jnase@cozen.com

Richard A. Kanaskie, Esquire
PA PUC BIE LEGAL TECHNICAL
400 North Street
Second Floor West
Harrisburg, PA 17105
rkanaskie@pa.gov

Harrison W. Breitman, Esquire
Erin L. Gannon, Esquire
MacKenzie Battle
Office of Consumer Advocate
555 Walnut Street
Harrisburg, PA 17101
hbreitman@paoca.org
egannon@paoca.org
mbattle@paoca.org

VIA U.S. MAIL, POSTAGE PREPAID AND ELECTRONIC MAIL ON JULY 7, 2023

Steven C. Gray, Esquire
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov

Respectfully submitted,

GALLAGHER LAW GROUP



Michael D. Gallagher, Esquire
PA I.D. No. 59237
Sean M. Gallagher, Esquire
PA I.D. No. 318872
attys@gallagher.legal