



July 7, 2023

VIA E-FILING

David P. Zambito

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

Re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a) and 1329, for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (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 the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland and Summit, in Butler County, Pennsylvania; Docket Nos. A-2022-3037047 et al.

Prehearing Conference Memorandum of Pennsylvania-American Water Company

Dear Secretary Chiavetta:

Pursuant to Ordering Paragraph 2 of the Prehearing Conference Order in the above-referenced matter, enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Prehearing Conference Memorandum of Pennsylvania-American Water Company. Copies are being served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me if you have any question or concern.

Sincerely,
COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

Enclosure

cc: Administrative Law Judge Marta Guhl
Athena DelVillar
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of July, 2023 served a true copy of the foregoing **Prehearing Conference Memorandum of Pennsylvania-American Water Company** upon the parties, listed below and in the manner described below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

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Respectfully submitted,



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Counsel for
Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl

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 CONFERENCE MEMORANDUM OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

AND NOW COMES Pennsylvania-American Water Company (“PAWC”), by and through its counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order issued by Administrative Law Judge Marta Guhl (the “ALJ”) on June 27, 2023, to file this Prehearing Conference Memorandum in the above-referenced matter. In support thereof, PAWC states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

PAWC and the Butler Area Sewer Authority (“BASA”) entered into an Asset Purchase Agreement (the “APA”) dated as of October 11, 2022, by which PAWC will purchase the wastewater system (the “System”) presently owned by BASA. On February 14, 2023, PAWC filed an application (the “Application”) at Docket No. A-2022-3037047 asking the Commission to approve its acquisition of the System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329 (the “Application”). An Amended Application was filed on February 17, 2023.

Steven C. Gray, Esq. and Nakea S. Hurdle, Esq. filed Notices of Appearance on February 17, 2023 and March 2, 2023, respectively, on behalf of the Office of Small Business Advocate (“OSBA”). Ms. Hurdle subsequently filed a Withdrawal of Appearance on June 16, 2023.

On February 22, 2023, Erika L. McLain, Esq. filed a Notice of Appearance on behalf of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (the “Commission”). On May 26, 2023, Ms. McLain withdrew her appearance, and Carrie B. Wright, Esq., filed her Notice of Appearance.

On April 12, 2023, Erin L. Gannon, Esq., Harrison W. Breitman, Esq., and Mackenzie C. Battle, Esq. filed Notices of Appearance on behalf of the Office of Consumer Advocate (“OCA”).

On March 7, 2023, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by March 21, 2023). On March 13, 2023, PAWC filed the information requested by TUS. On March 16, 2023, TUS staff notified PAWC that certain information remained missing. PAWC filed the requested information on March 27, 2023.

On April 6, 2023, TUS staff notified PAWC that it deemed PAWC’s filing deficient because it included a *pro forma* tariff that did not include BASA’s Industrial Pretreatment Program (“IPP”) pollutant loading rates together with an alternate *pro forma* tariff that included BASA’s IPP pollutant loading rates. On April 6, 2023, PAWC responded by filing a Second Amended Appendix A-12, which reflected the changes directed by TUS. PAWC asked that the Commission conditionally accept the Application and provide a due date for protests and notices of intervention.

On April 10, 2023, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain service and notice requirements. The April 10, 2023 Secretarial Letter, however, did not set a due date for protests and notice of intervention. By letter dated April 10, 2023, PAWC asked the Commission to establish such a due date. On April 12, 2023, a Secretarial

Letter was issued setting a protest period end date of July 10, 2023. On May 22, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of April 10, 2023.

On May 23, 2023, the Commission notified PAWC that it had finally accepted the Application. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* on June 10, 2023, with a protest deadline of July 10, 2023. The Commission issued a Call-in Telephonic Pre-Hearing Conference Notice on May 24, 2023, but that Pre-Hearing Conference was subsequently cancelled. Another Call-in Telephonic Pre-Hearing Conference Notice was issued on June 1, 2023 scheduling a Pre-Hearing Conference for July 11, 2023. The ALJ issued her Prehearing Conference Order for Telephonic Conference on June 27, 2023.

On May 26, 2023, BASA, the City of Butler, and the Township of Butler filed Petitions to Intervene. No objections have been filed. On June 9, 2023, PAWC filed a Petition for Leave to File Supplemental Direct Testimony, which was granted by the ALJ's Interim Order #1, issued on July 3, 2023. On June 30, 2023, Center Township and Summit Township filed Protests to the Application. On July 3, 2023, Cleveland-Cliffs Steel filed a Petition to Intervene. On July 5, 2023, PAWC filed Supplemental Direct Testimony pursuant to Interim Order #1.

II. COUNSEL

Counsel for PAWC are:

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III. SERVICE OF DOCUMENTS

PAWC's attorneys are authorized to accept service on behalf of PAWC in this proceeding. PAWC agrees to service by e-mail. The Prehearing Conference Order stated that each party is limited to one entry on the service list. Mr. Zambito should be included on the service list as counsel for PAWC. Additionally, PAWC has established a virtual data room for the proceeding to which the other parties have access.

IV. ISSUES

A. Satisfaction of Section 1102 Standards

PAWC submits that the acquisition of the System (the "Transaction") is necessary or proper for the service, accommodation, convenience or safety of the public. PAWC submits that the Transaction provides substantial affirmative public benefits and that PAWC, as an existing public utility, is presumed to possess the legal, financial, and technical fitness to own and operate the System. Indeed, PAWC is the largest investor-owned water and wastewater service provider in the Commonwealth. The Transaction will promote the Commission's goal of regionalization and consolidation, and the purchase price is reasonable in light of the appraisals that have been performed by the Utility Valuation Experts (singularly, "UVE" or, collectively, "UVEs"). Commission approval of the Transaction will open the possibility of further consolidation and regionalization of wastewater services in southwestern Pennsylvania.

B. Satisfaction of Section 1329 Standards

PAWC submits that it has complied with all of the requirements of Section 1329. The negotiated purchase price for the acquired assets is \$231,500,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$239,303,632 (\$246,178,265 appraisal conclusion by Weinert Appraisal and Depreciation Services, LLC + \$232,429,000 appraisal conclusion by Gannett Fleming Valuation and Rate

Consultants, LLC = \$478,607,265 /2 = \$239,303,632). Accordingly, the negotiated purchase price of \$231,500,000 is the fair market value for ratemaking purposes under Section 1329 (*i.e.*, the lower of the negotiated purchase price and the average of the UVEs' appraisals).

The APA does not include a "rate stabilization plan" as defined by Section 1329. As permitted by Section 1329, PAWC has petitioned -- as part of the instant filing -- for approval to implement a Distribution System Improvement Charge with respect to customers in the applied-for service territory prior to the first base rate case in which System plant-in-service is incorporated into rate base. PAWC has also, in accordance with Section 1329, petitioned for approval to accrue and defer certain post-acquisition improvement costs associated with the provision of service in the applied-for territory.

C. Certificates of Filing or Approvals for Section 507 Agreements

Section 507 of the Code, 66 Pa. C.S. § 507, generally requires PAWC to file with the Commission any agreement between PAWC and a municipal corporation. PAWC seeks either a Certificate of Filing or approval of: (a) the APA; (b) a Water Pollution Control Agreement for Central Butler County between City of Butler, Township of Butler, Township of Center, Township of Summit, Borough of East Butler, Deshon Area Sanitary Disposal and Sewer Authority, East Butler Borough Sewer Authority, East Butler Borough Sewer Authority, Meridian Water and Sewer Authority, Municipal Water and Sewer Authority of Center Township and Butler Area Sewer Authority dated as of February 20, 1974; a Service Agreement between the Township of Oakland and Butler Area Sewer Authority for the Service Area along Route 38 dated March 7, 1994; and a Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Cupps Road Service Area dated April 3, 1995.

V. WITNESSES

PAWC has already submitted direct testimony and exhibits sponsored by the following witnesses in written question and answer form:

Mr. Scott D. Fogelsanger

Mr. Fogelsanger is Director of Business Development for PAWC. His business address is 852 Wesley Drive, Mechanicsburg, PA 17011 and his business phone number is (717) 550-1509. Mr. Fogelsanger provided an overview of the Transaction. He explained why the Transaction is in the public interest and provides affirmative public benefits of a substantial nature. In addition, he explained why the Application should be promptly approved by the Commission. Finally, he explained that PAWC is legally, financially, and technically fit to acquire and operate the System.

Mr. Daniel J. Hufton, P.E.

Mr. Hufton is an Engineering Manager with PAWC. His business address is 60 Elrama Avenue, Elrama, PA 15038 and his business phone number is (412) 813-3026. He described the System and explained how it will be integrated into PAWC's existing operations. He also described PAWC's technical fitness to run the System, together with the benefits of the Transaction.

Ms. Ashley E. Everette

Ms. Everette is the Senior Director of Rates and Regulatory for American Water Works Service Company ("AWWSC"). Ms. Everette's business address is 852 Wesley Drive, Mechanicsburg, PA 17011 and her business phone number is (717) 550-1536. She testified to PAWC's financial fitness to acquire and operate the System. She also identified the ratemaking rate base, estimated the transaction and closing costs incurred by PAWC, summarized the rate provisions in the APA, described the customer notices associated with the Transaction and provided a statement regarding PAWC's intentions regarding accrual of certain post-acquisition improvement costs and deferral of related depreciation.

Mr. Jerome Weinert, ASA, PE, CDP

Mr. Weinert is a Principal and Director of Weinert Appraisal and Depreciation Services, LLC. Mr. Weinert has a business address of 8555 West Forest Home Avenue, Suite 201, Greenfield, WI 53228. He described the fair market value appraisal of the System that he and his staff performed on behalf of PAWC.

If necessary, PAWC will submit rebuttal and rejoinder testimony of these witnesses. PAWC also reserves the right to call additional witnesses and to present testimony on additional issues that may arise during the course of the proceeding.

VI. DISCOVERY

The ALJ's Prehearing Conference Order modified the Commission's discovery rules. It should be noted that, despite having no obligation to do so and in order to facilitate the timely processing of this proceeding, PAWC responded to numerous discovery requests from the public advocates prior to Commission final acceptance of the Application.

VII. PROTECTIVE ORDER

PAWC expects to file a Petition for Protective Order in this matter shortly.

VIII. PROCEDURAL SCHEDULE

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

IX. SETTLEMENT DISCUSSIONS

The Parties have already discussed the possibility of settling this case. PAWC is open to reaching a reasonable settlement.

Respectfully submitted,



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Counsel for Pennsylvania-American Water Company

Date: July 7, 2023