

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO  
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
(800) 684-6560

 @pa\_oca  
 /pennoca  
FAX (717) 783-7152  
consumer@paoca.org  
www.oca.pa.gov

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  
Company under Sections 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 Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Mackenzie C. Battle  
Mackenzie C. Battle  
Assistant Consumer Advocate  
PA Attorney I.D. # 330879  
MBattle@paoca.org

Enclosures:

cc: The Honorable Marta Guhl (**email only**)  
Athena DelVillar, ALJ's Legal Assistant (**email only**: [sdelvillar@pa.gov](mailto:sdelvillar@pa.gov))  
Certificate of Service

\*348510

## CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 7<sup>th</sup> day of July 2023.

### **SERVICE BY E-MAIL ONLY**

Carrie B. Wright, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120  
[carwright@pa.gov](mailto:carwright@pa.gov)  
*Counsel for I&E*

Steven C. Gray, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
[sgray@pa.gov](mailto:sgray@pa.gov)  
*Counsel for OSBA*

Elizabeth Rose Triscari, Esquire  
Erin K. Fure, Esquire  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
[elizabeth.triscari@amwater.com](mailto:elizabeth.triscari@amwater.com)  
[erin.fure@amwater.com](mailto:erin.fure@amwater.com)  
*Counsel for PAWC*

David P. Zambito, Esquire  
Jonathan P. Nase, Esquire  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[jnase@cozen.com](mailto:jnase@cozen.com)  
*Counsel for PAWC*

William H. Rissmiller  
1006 Hickory Lane  
Reading, PA 19606  
[whr19606@ptd.net](mailto:whr19606@ptd.net)

**SERVICE BY E-MAIL ONLY (continued)**

Thomas Wyatt, Esquire  
Matthew S. Olesh, Esquire  
Sydney N. Melillo, Esquire  
Obermayer Rebmann Maxwell & Hippel, LLP  
Centre Square West  
1500 Market Street, Suite 3400  
Philadelphia, PA 19102  
[Thomas.Wyatt@obermayer.com](mailto:Thomas.Wyatt@obermayer.com)  
[Matthew.Olesh@obermayer.com](mailto:Matthew.Olesh@obermayer.com)  
[Sydney.Melillo@obermayer.com](mailto:Sydney.Melillo@obermayer.com)  
*Counsel for City of Butler, Township of Butler,  
and Butler Area Sewer Authority*

Michael D. Gallagher, Esquire  
Sean M. Gallagher, Esquire  
110 East Diamond Street, Suite 101  
Butler, Pennsylvania 16001  
[attys@gallagher.legal](mailto:attys@gallagher.legal)  
*Counsel for Summit Township*

Kurt J. Boehm, Esquire  
Jody Kyler Cohn, Esquire  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)  
*Counsel for Cleveland-Cliffs Steel*

**SERVICE BY FIRST CLASS MAIL ONLY, POSTAGE PREPAID**

John J. Dolan  
145 North 7<sup>th</sup> Street  
Indiana, PA 15701

Cynthia L. Spigelmyer  
100 Leo Court  
Lewisberry, PA 17339

/s/ Mackenzie C. Battle  
Mackenzie C. Battle  
Assistant Consumer Advocate  
PA Attorney I.D. # 330879  
[MBattle@paoca.org](mailto:MBattle@paoca.org)

Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 83487  
[EGannon@paoca.org](mailto:EGannon@paoca.org)

Harrison W. Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
[HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Counsel for:  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Dated: July 7, 2023  
\*346814

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American	:	
Water Co. under Sections 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	:	

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the Prehearing Conference Order issued by Administrative Law Judge Marta Guhl on June 27, 2023, the Office of Consumer Advocate (OCA) provides the following:

**I. HISTORY OF THE PROCEEDING**

On February 14, 2023, Pennsylvania-American Water Company (PAWC or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the Butler Area Sewer Authority (BASA or Butler) wastewater collection and treatment system, the right of PAWC to provide wastewater service in portions of Butler County, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code.

On February 17, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Public Statement. On February 22, 2023, the

Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Notice of Appearance, Protest, and Public Statement on April 11, 2023.

By Secretarial Letter dated April 10, 2023, the Commission conditionally accepted the Application. The Commission required that individual notice be provided to PAWC's potentially affected existing water and wastewater customers, that PAWC ensure concurrent notice is given to all current BASA wastewater customers, and that newspaper notice in the BASA area be provided. On May 23, 2023, the Commission accepted the Application by Secretarial Letter. On June 27, 2023, a Prehearing Conference Order was issued scheduling a telephonic prehearing conference on Tuesday, July 11, 2023 and directing the parties to submit prehearing conference memoranda by 12:00 p.m. on July 7, 2023.

## **II. SERVICE ON THE OCA**

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Erin L. Gannon, and by Assistant Consumer Advocates Harrison W. Breitman and Mackenzie C. Battle. Two copies of all documents should be served on the OCA as follows:

Erin L. Gannon  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, Forum Place 5th Floor  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
Email: [OCAPAWCButler@paoca.org](mailto:OCAPAWCButler@paoca.org)

The OCA respectfully requests that the Presiding Officer permit electronic service without the requirement of a follow-up hard copy. Only to the extent that materials are not available electronically, the OCA requests that one hard copy be served upon Erin L. Gannon at the above mailing address.

### III. DISCOVERY

In the Prehearing Order issued June 27, 2023, the ALJ directed certain modifications to the Commission's procedural rules regarding discovery. In order to effectively investigate and adequately develop a record in this matter, the OCA requests some additional modifications of the Commission's procedural rules regarding discovery on a going-forward basis, as set forth below:

1. Answers to on-the-record data requests shall be served in-hand within three (3) calendar days of the requests.
2. Due dates are "in-hand" and electronic service on the due date will satisfy the "in-hand" requirement.

The OCA has served three sets of discovery to date.

### IV. WITNESSES

The OCA intends to present the testimony of Ralph Smith (Financial, Ratemaking, Appraisal and Policy Issues) and Morgan N. DeAngelo (Public Benefits of the Transaction). Their respective contact information is as follows:

Ralph Smith  
Larkin & Associates  
15728 Farmington Road  
Livonia, MI 48154  
[OCAPAWCButler@paoca.org](mailto:OCAPAWCButler@paoca.org)

Morgan N. DeAngelo  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor  
Harrisburg, PA, 17101  
[OCAPAWCButler@paoca.org](mailto:OCAPAWCButler@paoca.org)

To the extent necessary, the OCA's witnesses will present testimony regarding the impact of the proposed transaction on PAWC's existing customers and the acquired customers, and other financial, technical and ratemaking issues presented in this proceeding.

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is

necessary for any portion of its case, it will notify Your Honor and all parties of record immediately.

## **V. ISSUES**

The OCA is participating in this proceeding to ensure the interests of PAWC's existing customers and acquired customers are protected. Based upon its investigation and review of the applications, the OCA has compiled a list of issues to be addressed. These issues will be presented as appropriate by the OCA with the assistance of its expert witnesses:

(1) Provision of Safe, Adequate and Reasonable Service at Just and Reasonable Rates: The asset purchase agreements provide that PAWC will pay \$231.5 million for the City's wastewater system assets, which have a net depreciated original cost, as defined in Section 1329, of \$93 million. PAWC seeks to have the purchase price approved for inclusion in rate base under Section 1329, as part of this proceeding. The OCA is examining each appraisal and the requested rate base determination, and the rate impact on BASA customers and PAWC's existing customers resulting from the purchase price and PAWC's projected capital investment of \$75.8 million over 5 years in the BASA system. The OCA is also examining PAWC's proposals to adopt BASA's existing contract to provide free service to the VA Hospital and to implement industrial pretreatment program (IPP) fees in the BASA service territory.

(2) Substantial Affirmative Benefits: The OCA is reviewing the information provided by PAWC through formal and informal discovery to address the requirement that the transaction would substantially and affirmatively benefit PAWC's existing customers.

(3) Conditions: The OCA is considering whether and what conditions should be imposed upon the proposed transfers to ensure that PAWC's and BASA's customers are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations.

The OCA reserves the right to raise additional issues as the case proceeds.

## **VI. PUBLIC INPUT HEARINGS**

In *McCloskey v. Pa. P.U.C.*, the Commonwealth Court concluded that, in an Application proceeding under Section 1329, individual customer notice of the proposed sale has to be given to all ratepayers as well as an opportunity for them to participate in the proceeding. 195 A.3d 1055 (Pa. Commw. 2018). The OCA is aware of 14 informal protests and 1 formal consumer complaint filed with the Commission in this matter. As such, and considering the magnitude of the proposed transaction – \$231.5 million and 14,792 acquired customers – the OCA respectfully requests that the Commission conduct at least one in-person public input hearing in the service territory in addition to a virtual or telephonic public input hearing. The OCA requests that the connection information for the virtual/telephonic input hearing(s) should be placed on the hearing notice and all advertisements regarding the public input hearings. The OCA will work with the parties, ALJ Guhl, and the Commission’s scheduling staff to reach mutually agreeable hearing dates, however, the OCA requests that the public input hearings be scheduled as soon as possible so that the testimony can be incorporated and addressed in the written testimony.

## **VII. SCHEDULE**

The OCA proposes the following schedule:

Other Parties Direct Testimony	July 12, 2023
Virtual or Telephonic Public Input Hearing	July 18, 2023 at 6pm
In-Person Public Input Hearing	July 19, 2023 at 6pm
Rebuttal Testimony	July 18, 2023
Surrebuttal Testimony (and Supplemental Testimony to respond to Public Input Hearing testimony)	July 21, 2023
Rejoinder Outline	July 24, 2023 at noon

Hearings	July 25-26
Main Briefs	August 7, 2023
Reply Briefs	August 14, 2023
Recommended Decision	September 15, 2023

The OCA requests that email distribution will satisfy all in-hand service dates contained in the schedule.

### VIII. SETTLEMENT

The OCA will continue engaging in settlement discussions with all parties.

Respectfully submitted,

/s/ Harrison W. Breitman  
Harrison W. Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
[HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 83487  
[EGannon@paoca.org](mailto:EGannon@paoca.org)

Mackenzie C. Battle  
Assistant Consumer Advocate  
PA Attorney I.D. #330890  
[MBattle@paoca.org](mailto:MBattle@paoca.org)

Counsel for:  
Patrick M. Cicero  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg PA 17101-1923  
Phone: (717) 783-5048

DATED: July 7, 2023  
\*347950