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July 14, 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 Butler Area Sewer Authority (“BASA”) in the above matter, and are submitting, via electronic filing with this letter, the BASA’s Motion to Strike Portions of the Protest and Testimony of Wilfred Adams filed on behalf of Municipal Protestant Summit Township.

This document is also being served via electronic mail all parties of record, unless otherwise indicated on the Certificate of Service.

Very truly yours,



Sydney N. Melillo

CC: All parties of record
The Honorable Marta Guhl, Administrative Law Judge
Thomas S. Wyatt, Esq.
Matthew S. Olesh, Esq.

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
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Lewisberry, PA 17339

/s/ Sydney N. Melillo

Dated: July 14, 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 ;

NOTICE

TO: Summit Township
c/o Gallagher Law Group
110 East Diamond Street
Suite 101
Butler, PA 16001
attys@gallagher.legal

Pursuant to 52 Pennsylvania Code § 5.103(b) and the directive of presiding officer at the Pre-Hearing Conference, notice is hereby given that an answer to the following motion shall be filed within the time set by the presiding officer.

Date of Service: July 14, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

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 ;

**MOTION OF BUTLER AREA SEWER AUTHORITY TO STRIKE PORTIONS OF THE
PROTEST AND TESTIMONY OF WILFRED ADAMS FILED ON BEHALF OF
MUNICIPAL PROTESTANT SUMMIT TOWNSHIP**

AND NOW comes, pursuant to 52 Pa. Code 5.103, the Butler Area Sewer Authority (“BASA” or the “Authority”), by and through its undersigned counsel, files this Motion to Strike Portions of the Protest and Testimony of Wilfred Adams filed on behalf of Municipal Protestant Summit Township. In support of its motion, the Authority submits as follows:

I. BACKGROUND

1. This proceeding concerns the application of Pennsylvania-American Water Company (“Pennsylvania-American”), filed with the Public Utility Commission (“Commission”) on February 14, 2023, for approval, *inter alia*, of its acquisition of the wastewater system assets of BASA pursuant to Sections 1102 and 1329 of the Public Utility Code (the “Proposed Transaction”).

2. On June 30, 2023, Summit Township (“Summit”) filed a Protest to the Proposed Transaction (the “Protest”).

3. In accordance with the litigation schedule adopted at the prehearing conference on July 11, 2023, written testimony of Wilfred Adams, the Chairman of the Board of Supervisors of Summit, was served on July 12, 2023 in support of Summit's Protest.

4. Regulations of the Commission at 52 Pa. Code Section 5.103 allow for the presentation of requests, by motion, for relief desired. A motion may be made, in writing, at any time.

5. Thus, the Authority respectfully requests that (1) the Commission strike certain portions of the Protest and testimony of Mr. Adams's in support of Summit's Protest that purport to invite the Commission to interpret the terms and conditions of a private contract, the Water Pollution Control Agreement, dated February 20, 1974 attached to Pennsylvania-American's Application as Appendix A-25.1, and/or adjudicate an alleged private contractual dispute pursuant to that agreement, and (2) limiting any future reference to the Water Pollution Control Agreement in this proceeding for the purposes of alleging a breach.

II. ARGUMENT

6. Portions of the Protest and Mr. Adams's testimony in support of Summit's Protest purport to invite the Commission to interpret the terms and conditions of the Water Pollution Control Agreement, dated February 20, 1974, and/or adjudicate an alleged private contractual dispute pursuant to the Water Pollution Control Agreement, which is outside of the bounds of the Commission's jurisdiction.

7. The Commission only has the enforcement and remedial authority granted to it by the General Assembly set forth in the Public Utility Code. *See Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977) ("The enforcement and remedial powers of the [Commission],

although formidable, are not those of a court. The [Commission] is empowered to correct, by regulation or order, abuses in the provision of service.”).

8. Thus, as a creation of the legislature, the Commission *must* act within, and may not exceed, its jurisdiction. *Id.*

9. The Pennsylvania Commonwealth Court has repeatedly held that the Commission does not have the authority to adjudicate private contractual disputes. *See, e.g., T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 779 (Pa. Commw. Ct. 1985); *Bell Tel. Co. v. Pennsylvania Public Utility Com.*, 417 A.2d 827, 830 (Pa. Commw. Ct. 1980) (“Jurisdiction over suits for damages based on negligence or breach of contract wherein a utility’s performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts is in the Courts.”).

10. Here, to support its opposition to the Proposed Transaction, Summit references Water Pollution Control Agreement in both its Protest and Mr. Adams’s testimony to ostensibly argue, *inter alia*, that the Authority’s decision to sell its assets without first consulting Summit constitutes a breach of that agreement.¹ *See* Summit Protest, ¶¶ 15-19; Direct Testimony of Wilfred Adams, pp. 8:17-9:6.

11. Pursuant to well-settled precedent, the Commission lacks the authority to adjudicate private contractual claims; therefore, even if Summit had a cognizable claim for

¹ Even if the Commission had jurisdiction over Summit’s purported breach of contract claims, they are without merit. The particular provision of the Water Pollution Control Agreement that Summit relies upon to support its position requires BASA to “consult with and be advised by” each party to that agreement regarding all financial matters regarding the grants necessary to implement the “Water Quality Management Plan For Central Butler County.” *See* Appendix A-25.1, at ¶ 7. Absent from the Water Pollution Control Agreement is *any* requirement that consent, or any sort of approval is needed for the sale of the wastewater assets of the Authority. In fact, paragraph 4 of the Water Pollution Control Agreement makes clear that “all facilities presently constructed and to be constructed will be the property of the [Authority].” *See id.* ¶ 4. The Water Pollution Control Agreement merely provided for consultation for the limited purpose of obtaining federal grants to improve the system in the 1970s. Further, any contention that Summit was not given the opportunity by the Authority to give input regarding the Proposed Transaction is patently untrue.

breach (which the Authority maintains the position that no such claims exist), the appropriate forum for that claim is a court of general legal jurisdiction.

12. Accordingly, the Authority respectfully request that the Commission strike paragraphs 15 through 19 of Summit's Protest and page 8, line 17 through page 9, line 6, of Mr. Adams's testimony to the extent that these references invite the Commission to adjudicate an alleged breach of the Water Pollution Control Agreement, and (2) limiting any future reference to the Water Pollution Control Agreement in this proceeding for the purposes of alleging a breach or asking for interpretation of its contractual provisions.

WHEREFORE, Butler Area Sewer Authority respectfully requests that the Honorable Marta Guhl and the Pennsylvania Public Utility Commission grant this Motion to Strike Portions of the Protest and Testimony of Wilfred Adams filed on behalf of Municipal Protestant Summit Township.

Respectfully submitted,

/s/ Thomas Wyatt

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Dated: July 14, 2023