

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

Public Meeting held August 24, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Joint Application of The York Water Company-Wastewater (York Water-WW) and Conewago Industrial Park Water & Sewer Company-Wastewater (CIP-WW) for approval of the rights of: (1) York Water-WW to acquire certain wastewater facilities from CIP-WW; (2) CIP-WW to abandon wastewater service to the public in West Donegal Township, Lancaster County, Pennsylvania; and (3) York Water-WW to offer, render, furnish and supply wastewater service to the public in a portion of West Donegal Township, Lancaster County, Pennsylvania

Docket Nos.:
A-2023-3038862
A-2023-3038864

ORDER

BY THE COMMISSION:

By the joint application (Joint Application) filed on March 7, 2023, The York Water Company-Wastewater (York Water-WW), Utility Code 230087, and Conewago Industrial Park Water & Sewer Company-Wastewater (CIP-WW), Utility Code 230057, seek certificates of public convenience pursuant to Sections 1102(a)(1)(i), (2), and (3) of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 1102(a)(1)(i), (2), and (3), evidencing Pennsylvania Public Utility Commission (Commission) approval of: (1) York Water-WW's acquisition of certain wastewater facilities from CIP-WW; (2) CIP-WW's abandonment of wastewater service to the public in West Donegal Township, Lancaster County, Pennsylvania; and (3) York Water-WW's right to offer, render, furnish and supply

wastewater service to the public in a portion of West Donegal Township, Lancaster County, Pennsylvania.

I. AFFECTED ENTITIES AND BACKGROUND

York Water-WW is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania with offices located at 130 East Market Street, York, Pennsylvania 17401. As of December 31, 2022, York Water-WW furnished wastewater service to 5,859 customers in various municipalities throughout portions of Adams, Franklin, and York Counties. York Water-WW is a division of The York Water Company (York Water), Utility Code 213550. As of December 31, 2022, York Water provided water service to 70,872 customers in various municipalities throughout portions of Adams, Franklin, and York Counties.

Conewago Industrial Park Water & Sewer Company (CIP) is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania with a mailing address of 401 Lisburn Heights Drive, Lewisberry, Pennsylvania 17339-9556. CIP consists of a wastewater division, CIP-WW, and a water division (CIP-Water), that provide wastewater and water services, respectively, to the 32 industrial customers in an industrial park in West Donegal Township. CIP-WW owns and operates the wastewater collection, treatment, and disposal system and related assets (Wastewater System). CIP-Water, Utility Code 210086, owns and operates the water supply, treatment and distribution system and related assets (Water System) serving the same industrial park.

On November 4, 2022, York Water and CIP-Water filed a joint application (Joint Application - Water) that requested Commission approval of: (1) York Water's acquisition of certain water facilities from CIP-Water; (2) CIP-Water's abandonment of water service to the public in West Donegal Township, Lancaster County, Pennsylvania; and (3) York Water's right to offer, render, furnish and supply water service to the public in a portion of West Donegal Township, Lancaster County, Pennsylvania. By Order

entered June 15, 2023, at Docket Nos. A-2022-3036579 and A-2022-3036582, the Commission approved the Joint Application - Water, as modified by the Joint Petition for Settlement at those dockets.¹

York Water-WW and CIP-WW submitted proofs of publication and service to the appropriate entities. Notice of the Joint Application was published in the *Pennsylvania Bulletin*, 53 Pa.B. 1651, on Saturday, March 18, 2023. The protest period ended April 3, 2023. The Office of Small Business Advocate (OSBA) filed a notice of intervention and protest on March 16, 2023, and the matter was assigned to the Commission's Office of Administrative Law Judge (OALJ) for hearings. On March 31, 2023, OSBA filed a letter of satisfaction stating that its concerns regarding the Joint Application were resolved. On April 19, 2023, York Water filed a motion to transfer the Joint Application from OALJ to the Commission's Bureau of Technical Utility Services. By an Interim Order dated April 27, 2023, York Water's motion was granted. No further protests were filed, and no hearings were held.

II. LOCATION AND DESCRIPTION OF REQUESTED TERRITORY

The requested service territory is situated in the northwestern portion of West Donegal Township, Lancaster County, near the intersection of State Route 230 and Industrial Road. The northern boundary of the requested service territory follows the general alignment of Conewago Creek, and the southern boundary generally follows the alignment of a railway that was labeled "National Railroad Passenger Corp." on a map provided in the Joint Application as Exhibit B-1. A metes and bounds description of the requested service territory was provided as the Joint Application's Exhibit C, which indicated that the requested service territory includes an area of approximately 546 acres of land.

¹ See, *Joint Application of The York-Water Company and Conewago Industrial Park Water and Sewer Company*, at Docket Nos. A-2022-3036579 and A-2022-3036582.

III. DESCRIPTION OF FACILITIES TO BE ACQUIRED

In the Joint Application, major system assets were described as CIP-WW's collection system, wastewater treatment plant (WWTP), outfall, and all ancillary facilities necessary to provide wastewater collection and treatment services to the customers within the requested service territory. It was also noted that York Water-WW will acquire all utility easements, rights-of-way, and real property associated with the Wastewater System. CIP-WW's WWTP is designed to treat 150,000 gallons per day (GPD) and is currently treating an average of 1,475,000 gallons per month, or approximately 49,167 GPD. York Water-WW averred that it expects to be able to meet projected demand requirements through the year 2036. In supplemental information filed with the Commission, York Water-WW noted that the Conewago Industrial Park is built out at this time and that absent a new tenant with significant wastewater needs, the WWTP currently has 54 Equivalent Dwelling Units (EDUs) of excess capacity.² CIP-WW also provided a list of Wastewater System assets that: described and quantified asset sizes and materials; identified the dates certain assets were acquired and placed into service; and quantified asset direct or allocated costs.

On April 28, 2022, York Water and CIP entered a Purchase Agreement for York Water to acquire CIP's Water System and Wastewater System (Purchase Agreement). A copy of the Purchase Agreement was provided in the Joint Application as Confidential Exhibit E. **[BEGIN CONFIDENTIAL]**

² York Water-WW's effective tariff defines EDUs as, "[f]or a commercial and/or industrial Customer the EDU is a measure based upon the estimated maximum daily wastewater flow for that type of business as calculated by the Department of Environmental Protection Regulation at 25 Pa. Code §73.17 divided by 350 gallons per day," and that "350 gallons per day is a typical estimated maximum daily wastewater flow from a single family unit."

[END CONFIDENTIAL]

IV. WATER AND WASTEWATER PURCHASE AGREEMENT

The Joint Application identified a total purchase price of \$487,000 for both the

Water System and Wastewater System, allocated as \$100,000 for the Wastewater System, \$300,000 for the Water System, and \$75,000 for Water System and Wastewater System real estate. The \$75,000 for real estate will be allocated 50% to the Wastewater System and 50% to the Water System. The additional capital requirements described in Section V below were also identified in the Joint Application as being required by the Purchase Agreement.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

V. ADDITIONAL CAPITAL REQUIREMENTS

In addition to the purchase price, York Water paid or will pay CIP \$25,000 to partially reimburse CIP's closing costs, including \$10,000 upon the execution of the Purchase Agreement and \$15,000 at closing. Additionally, York Water agreed to pay CIP \$12,000 for the cost of a valve within the Wastewater System that CIP-WW was

required to purchase after the execution of the Purchase Agreement. York Water-WW also indicated that it plans to initially invest in evaluating inflow and infiltration of Wastewater System mains and services and connecting with the Company’s master supervisory control and data acquisition (SCADA) system. York Water-WW estimated an additional cost of \$60,000 to install SCADA equipment. York Water-WW indicated that its costs will be financed by internally generated funds, proceeds from the issuance of common stock under its dividend reinvestment and direct stock purchase and employee stock purchase plans, and, if necessary, borrowing against its lines of credit.

Further, in the Joint Application, York Water-WW noted that there have been no contributions-in-aid-of-construction (CIAC) toward Wastewater System construction, and that CIP-WW has no outstanding PENNVEST loans on the Wastewater System. However, CIP-WW’s 2022 annual financial report filed with the Commission identified net CIAC of approximately \$2,820,207. In supplemental information filed with the Commission, York Water-WW clarified that the Joint Application inadvertently misstated the treatment of CIAC and provided the following updated tentative journal entries to record the transaction in its accounts:

1. Record Purchase of System

Account No.	Account Description	Debit	Credit
105	Construction Work in Progress	\$162,000	
131	Cash		\$162,000

2. Close Project to Utility Plant

Account No.	Account Description	Debit	Credit
101	Utility Plant in Service	\$3,752,293	
108	Accumulated Depreciation (assets net of depreciation)		\$788,076
271	Customer Contributions		\$3,512,462

108	Accumulated Depreciation (CIAC)	\$692,255	
114	Utility Plant Acquisition Adj.	\$17,990	
105	Construction Work in Progress (Purchase Price + Other Acquisition Costs)		\$162,000

In the Joint Application, York Water-WW indicated that it would perform an original cost study after closing to determine the Wastewater System's original cost and accumulated depreciation. By this Order, York Water-WW will be required to file a copy of the original cost study of the acquired assets with the Commission upon completion of said study.³ Additionally, York Water-WW will be directed to identify this transaction for individual review in the context of its next general rate case that proposes to include the value of these assets in rate base in order to evaluate the reasonableness of the original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Public Utility Code, 66 Pa.C.S. § 1327.⁴

VI. PROPOSED RATES

In accordance with CIP-WW's effective tariff, customers within the requested service territory are charged \$13.89 per 1,000 gallons based on metered water usage data and are subject to a minimum charge of \$175.00 per calendar quarter. CIP-WW's effective tariff also identified a service termination or resumption charge of \$60 and a schedule of pretreatment program charges for customers required to pretreat wastewater prior to discharge into the Wastewater System. A copy of CIP-WW's effective tariff was provided in the Joint Application as Exhibit D.

A copy of York Water- WW's *pro forma* tariff supplement was provided in the Joint Application as Exhibit I, and an updated *pro forma* tariff supplement (Updated Tariff Supplement) was provided in supplemental information filed with the

³ See, Ordering Paragraph 9.

⁴ See, Ordering Paragraph 10.

Commission. The Updated Tariff Supplement indicated that York Water-WW intends to adopt CIP-WW's metered rate of \$13.89 per 1,000 gallons but will modify the minimum charge to be \$58.33 per month, which is equivalent to the current quarterly charge. York Water-WW would also adopt CIP-WW's \$60 termination or resumption charge and its schedule of pretreatment charges.

The Joint Application's Exhibit N consisted of a copy of the notice that York Water-WW indicated it had sent to CIP-WW's customers identifying its intent to convert CIP-WW's existing quarterly rates to monthly rates for wastewater service and to bill monthly.

York Water-WW estimated the annual revenue for providing wastewater service to customers within the requested territory to be approximately \$296,916, based on an average monthly consumption of 55,667 gallons and annual operating expenses of \$187,890, including operation and maintenance, depreciation, and tax expenses. The estimated revenue and expenses would result in a net annual operating income of approximately \$109,026. A calculation of the estimated annual revenue and expenses was provided in the Joint Application as Exhibit J.

VII. PERMITS, EASEMENTS, AND RIGHTS-OF-WAY REQUIRED

In the Joint Application, York Water-WW indicated that it is acquiring all Wastewater System permits. In supplemental information filed with the Commission, CIP-WW provided copies of its National Pollutant Discharge Elimination System Permit No. PA0080055 and Water Quality Management (WQM) permit amendment A-2 to its WQM Permit No. 3674401 issued by the Pennsylvania Department of Environmental Protection (DEP) that approved the construction of the major facilities of the WWTP. A copy of CIP-WW WQM Permit No. 3674401 is on file with the Commission at Docket No. A-230057. As noted above in Section III, York Water-WW will acquire CIP-WW's easements and rights-of-way related to the Wastewater System.

VIII. OPERATIONS UNDER YORK WATER–WW

York Water-WW indicated that it would operate and manage the Wastewater System as a standalone collection and treatment system from its office in York, Pennsylvania and that the Wastewater System is approximately 25 miles from its nearest wastewater collection or treatment system. Additionally, York Water-WW identified the certified operator it intends to assign as the primary operator of the Wastewater System and provided a copy of the operator's certificate in the Joint Application as Exhibit M. York Water-WW indicated that it is not anticipating any physical, operational, or managerial changes to its operations as a result of the acquisition.

IX. LAND-USE PLANNING COMPLIANCE AND ACT 537 OFFICIAL SEWAGE FACILITIES PLANNING

The Joint Application's Exhibit K consisted of a copy of a land use compliance form letter that was signed and dated, July 18, 2022, by a representative of West Donegal Township, which indicated York Water-WW's proposed expansion complies with West Donegal Township's land use planning. Likewise, Exhibit L of the Joint Application consisted of a copy of the same form letter, signed and dated July 26, 2022, by a representative of the Lancaster County Planning Commission, and a copy of a comprehensive plan consistency statement from the Lancaster County Planning Department. These documents indicated that the Joint Application is consistent with Lancaster County's comprehensive plan.

In supplemental information filed with the Commission, York Water averred that West Donegal Township's Act 537 Plan was satisfied when CIP initiated service in its certificated service area and that an Act 537 Plan Special Study is not applicable to the proposed transaction.

X. OTHER CONSIDERATIONS

York Water-WW averred that no corporation, partnership, or individual, other than CIP-WW, is now furnishing or has corporate or franchise rights to furnish wastewater service within the requested territory and that no other entities are providing wastewater service within one mile of the requested territory. As such, no competitive condition would be created by the Joint Application's approval. York Water-WW noted that CIP-WW's owner is seeking to retire from the wastewater service business, and that York Water-WW will bring significant experience, professional staff and operators, customer service support, and other customer and facilities resources to the Wastewater System in order to best serve customers and continue to maintain compliance with existing and proposed regulatory requirements. In supplemental information filed with the Commission, York Water-WW asserted that approval of the Joint Application will benefit its existing wastewater customers by expanding the company's customer base and thus allowing York Water-WW's fixed costs to be spread over a greater number of customers.

Commission correspondence with DEP's Southcentral Regional Office indicated that DEP does not have any pending actions or outstanding complaints against York Water-WW or CIP-WW. Finally, York Water-WW and CIP-WW are current with their financial reports, annual Security Planning and Readiness report filings and have no outstanding fines or assessments due to the Commission.

XI. CONCLUSION

Based upon the facts that York Water-WW will expand its service territory to customers in compliance with Commission regulations; that York Water-WW will be able to meet the needs of new customers without apparent detriment to its existing customers; and that York Water-WW has the technical, financial and legal fitness to own, operate and maintain the system; the Commission finds that granting approval of the

Joint Application is necessary or proper for the service, accommodation, convenience or safety of the public and in the public interest; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Application of The York Water Company-Wastewater and Conewago Industrial Park Water & Sewer Company-Wastewater at Docket Nos. A-2023-3038862 and A-2023-3038864, is hereby approved, consistent with this Order.

2. That a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of The York Water Company-Wastewater to acquire the wastewater system assets owned by Conewago Industrial Park Water & Sewer Company-Wastewater, as described in the Joint Application.

3. That a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of Conewago Industrial Park Water & Sewer Company-Wastewater to sell its wastewater system assets to The York Water Company-Wastewater, as described in the Joint Application.

4. That The York Water Company-Wastewater shall provide written notification to the Secretary's Bureau within ten (10) days of the closing with Conewago Industrial Park Water & Sewer Company-Wastewater, at Docket Nos. A-2023-3038862 and A-2023-3038864.

5. That following Commission receipt of the notice of closing as required in Ordering Paragraph 4, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(1)(i) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(1)(i), evidencing Commission approval of the right of The York Water Company-Wastewater to begin to offer, render, furnish and supply wastewater service to the public in a portion of West Donegal Township, Lancaster County, Pennsylvania.

6. That within ten (10) days following the date of closing with Conewago Industrial Park Water & Sewer Company-Wastewater, The York Water Company-Wastewater shall file a tariff supplement with the Secretary's Bureau at Docket Nos. A-2023-3038862 and A-2023-3038864, to become effective on one day's notice and incorporating portions of West Donegal Township, Lancaster County, in its wastewater service territory, consistent with the updated *pro forma* tariff supplement provided in the Joint Application's supplemental information.

7. That following Commission receipt of the notice of closing as required in Ordering Paragraph 4, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(2) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(2), evidencing Commission approval of the right of Conewago Industrial Park Water & Sewer Company-Wastewater to abandon wastewater service to the public in West Donegal Township, Lancaster County, Pennsylvania.

8. That upon the issuance of the Certificate of Public Convenience pursuant to Ordering Paragraph 7, Conewago Industrial Park Water & Sewer Company-Wastewater shall return all copies of previously issued Certificates of Public Convenience to the Commission's Secretary's Bureau; be removed from all active utility lists maintained by the Commission's Secretary's Bureau and the Bureau of Administrative Services; and Conewago Industrial Park Water & Sewer Company-Wastewater's tariff shall become null and void and will be removed from the Commission's active files.

9. That The York Water Company-Wastewater shall file a copy of its original cost study of the wastewater system assets acquired from Conewago Industrial Park Water & Sewer Company-Wastewater with the Secretary's Bureau at Docket Nos. A-2023-3038862 and A-2023-3038864, with notice to the Bureau of Technical Utility Services, the Bureau of Audits, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate upon completion of said study.

10. That, at the time of filing its next base rate case, which proposes to include the assets of any of the acquisitions identified in this Order in rate base, The York Water Company-Wastewater shall provide testimony that specifically references Docket Nos. A-2023-3038862 and A-2023-3038864 and that justifies any amount claimed in rate base, in order to evaluate the reasonableness of the original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Public Utility Code, 66 Pa.C.S. § 1327.

11. That if The York Water Company-Wastewater or Conewago Industrial Park Water & Sewer Company-Wastewater determines that the transaction identified herein will not occur, they will promptly file notice of such determination with the Secretary's Bureau at Docket Nos. A-2023-3038862 and A-2023-3038864 and return the Certificates of Public Convenience issued in Ordering Paragraphs 2 and 3.

12. That nothing herein shall be construed as an approval or determination of costs or expenses for the purposes of just or reasonable rates or to exempt The York Water Company-Wastewater from obtaining all necessary permits, licenses, and approvals from other federal, state, and local government agencies having jurisdiction.

13. That a copy of this Order be served upon The York Water Company-Wastewater, Conewago Industrial Park Water & Sewer Company-Wastewater, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the West Donegal Township Board of Supervisors, the West Donegal Township Planning Commission, the Lancaster County Commissioners, the Lancaster County Planning Commission, the Pennsylvania Department of Revenue's Bureau of Corporate Taxes, and the Pennsylvania Department of Environmental Protection - Southcentral Regional Office and its Bureau of Regulatory Counsel.

14. That upon the issuance of the Certificates of Public Convenience as outlined in Ordering Paragraphs 5 and 7, or upon the return of either of the Certificates of

Public Convenience issued in Ordering Paragraphs 2 and 3, the proceedings at Docket Nos. A-2023-3038862 and A-2023-3038864 be closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 24, 2023

ORDER ENTERED: August 24, 2023