



September 27, 2023

**VIA E-FILING**

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

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

**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), 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; Docket No. A-2022-3037047**

**Joint Motion of Pennsylvania-American Water Company, the Butler Area Sewer Authority, the City of Butler, and the Township of Butler to Strike the Reply Exceptions Filed Jointly by the Townships of Summit and Center, and Requesting that the Commission Establish an Expedited Deadline for Filing an Answer to this Joint Motion**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the above-referenced Joint Motion.

**PLEASE NOTE THAT, DUE TO THE STATUTORY DEADLINE FOR THE COMMISSION TO ISSUE A FINAL ORDER IN THIS MATTER, THE ENCLOSED MOTION ASKS THE COMMISSION TO ESTABLISH AN EXPEDITED DEADLINE OF OCTOBER 2, 2023 FOR FILING AN ANSWER TO THIS MOTION.**

Copies are being served as shown on the attached certificate of service.

Rosemary Chiavetta, Secretary  
September 27, 2023  
Page 2

---

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

Sincerely,

COZEN O'CONNOR



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

DPZ/kmg  
Enclosure

cc: Administrative Law Judge Marta Guhl  
Per Certificate of Service  
ra-OSA@pa.gov  
Elizabeth Rose Triscari, Esq.  
Erin Fure, 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 27th day of September, 2023 served a true copy of the foregoing **Joint Motion of Pennsylvania-American Water Company, the Butler Area Sewer Authority, the City of Butler, and the Township of Butler** 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**

Harrison W. Breitman, Esq.  
Erin L. Gannon, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
OCAPAWCButler@paoca.org  
Counsel for *Office of Consumer Advocate*

Steven C. Gray, Esq.  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1<sup>st</sup> Floor  
Harrisburg, PA 17101  
sgray@pa.gov  
Counsel for *Office of Small Business Advocate*

Carrie B. Wright, Esq.  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street, Second Floor West  
Harrisburg, PA 17120  
carwright@pa.gov

Thomas S. Wyatt, Esq.  
Matthew S. Olesh, Esq.  
Sydney N. Melillo, Esq.  
Obermayer Rebman Maxwell & Hippel LLP  
Centre Square West  
1500 Market St., Suite 3400  
Philadelphia, PA 19102-2101  
thomas.wyatt@obermayer.com  
matthew.olesh@obermayer.com  
sydney.melillo@obermayer.com  
Counsel for *BASA, City of Butler, Township of Butler*

Kurt H. Boehm, Esq.  
Jody Kyler Cohn, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh St., Suite 1510  
Cincinnati, OH 45202  
kboehm@bkllawfirm.com  
jkylercohn@bkllawfirm.com  
Counsel for *Cleveland-Cliffs Steel*

Michael D. Gallagher, Esq.  
Sean M. Gallagher, Esq.  
Gallagher Law Group  
110 East Diamond St., Suite 101  
Butler, PA 16001  
attys@gallagher.legal  
Counsel for *Center Township and Summit Township*

**VIA FIRST CLASS MAIL ONLY**

Kevin C. Higgins  
Energy Strategies  
111 East Broadway, Suite 1200  
Salt Lake City, Utah 84111

William H. Rissmiller  
1006 Hickory Lane  
Reading, PA 19606

Respectfully submitted,



---

David P. Zambito, Esquire (PA ID #80017)  
Jonathan P. Nase, Esquire (PA ID #44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
(717) 703-5892  
dzambito@cozen.com  
jnase@cozen.com

Counsel for  
*Pennsylvania-American Water Company*

## VERIFICATION

I, Scott D. Fogelsanger, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

9/27/23

Scott D. Fogelsanger

## VERIFICATION

I, Matthew S. Olesh, counsel for the Butler Area Sewer Authority, the City of Butler and the Township of Butler, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: September 27, 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), :  
for approval of (1) the transfer, by sale, of substantially all :  
of the assets, properties and rights related to its wastewater :       Docket No. A-2022-3037047,  
collection and treatment system owned by the Butler Area :       *et al.*  
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 PLEAD**

TO: Parties at Docket Nos. A-2022-3037047, *et al.*

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that Pennsylvania-American Water Company, the Butler Area Sewer Authority, the City of Butler, and the Township of Butler have filed a Joint Motion to Strike the Reply Exceptions filed Jointly by the Townships of Center and Summit at the above-referenced dockets, to which you may file an answer within a period to be fixed by the Commission. Your failure to answer will allow the Commission to rule on the Joint Motion without a response from you, thereby requiring no other proof. All pleadings such as an Answer to this Joint Motion must be filed with the Secretary of the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the undersigned counsel.



David P. Zambito, Esquire (I.D. No. 80017)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: (717) 703-5892  
E-mail: dzambito@cozen.com

Counsel for *Pennsylvania-American Water  
Company*

Date: September 27, 2023

*/s/ Thomas S. Wyatt, Esq.*

Thomas S. Wyatt, Esq. (I.D. No. 89342)  
Obermayer Rebmann Maxwell & Hippel, LLP  
Centre Square West  
1400 Market Street, Suite 3400  
Philadelphia, PA 19102  
Telephone: (215) 665-3043  
E-mail: Matthew.Olesh@obermayer.com

Counsel for *Butler Area Sewer Authority,  
City of Butler, Township of Butler*

**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, for approval of (1) the transfer, by sale, to :  
Pennsylvania-American Water Company, of substantially : Docket Nos. A-2022-3037047  
all of the assets, properties and rights related to the : *et al.*  
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, Penn and Summit, in Butler County, Pennsylvania :

---

**JOINT MOTION OF PENNSYLVANIA-AMERICAN WATER COMPANY, THE  
BUTLER AREA SEWER AUTHORITY, THE CITY OF BUTLER, AND THE  
TOWNSHIP OF BUTLER TO STRIKE THE REPLY EXCEPTIONS FILED JOINTLY  
BY THE TOWNSHIPS OF SUMMIT AND CENTER AND REQUESTING THAT THE  
COMMISSION ESTABLISH AN EXPEDITED DEADLINE FOR FILING AN ANSWER  
TO THIS JOINT MOTION**

---

AND NOW COMES Pennsylvania-American Water Company (“PAWC”), the Butler Area Sewer Authority (“BASA”), the City of Butler (the “City”) and the Township of Butler (the “Township”) (together, the “Joint Movants”) to file this Joint Motion to Strike the Reply Exceptions filed Jointly by the Townships of Summit and Center (the “Reply Exceptions”).<sup>1</sup> Due to the statutory requirement that the Commission issue a Final Order in this matter within six months of the date this case was finally accepted for filing, 66 Pa. C.S. § 1329(d)(2), PAWC respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) require

---

<sup>1</sup> This document, filed on September 26, 2023, was titled “Reply to Exceptions Filed by Pennsylvania-American Water Company, Butler Area Sewer Authority, the Township of Butler and the City of Butler, Submitted Jointly by Protestants, Center Township and Summit Township.”

Answers to this Motion to be filed on an expedited basis (specifically, by Monday, October 2, 2023).

In support whereof, the Joint Movants aver as follows:

**I. PROCEDURAL HISTORY AND STATEMENT OF FACTS**

1. On February 14, 2023, PAWC filed the instant Application (as amended, the “Application”), asking the Commission to approve PAWC’s acquisition of the wastewater system (the “System”) currently owned by BASA, pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (the “Code”), 66 Pa. C.S. §§ 507, 1102 and 1329.

2. On May 26, 2023, BASA, the City and the Township (the “BASA Parties”) filed Petitions to Intervene, which were subsequently granted.

3. On June 30, 2023, Center Township (“Center”) filed a Protest. Also on June 30, 2023, Summit Township (“Summit”) filed a Protest.

4. On May 23, 2023, the Commission notified PAWC that it had finally accepted the Application for filing. As a result, the Commission must issue a Final Order in this proceeding by November 23, 2023. 66 Pa. C.S. § 1329(d)(2).

5. On July 12, 2023, Center and Summit (as well as other Parties) served Direct Testimony. The Townships’ witnesses opposed the Application, in part, because the Townships would not receive any of the proceeds from the sale of the System. Summit St. No. 1 p. 5; Center St. No. 1 p. 4.<sup>2</sup> *See also*, Summit St. No. 1-R pp. 3-4, Center St. No. 1-R pp. 2-4.<sup>3</sup> On July 14, 2023, BASA, the City and the Township (the “BASA Parties”) filed Motions to Strike portions of

---

<sup>2</sup> Center and Summit Townships’ witnesses also contended that BASA was providing less than adequate wastewater service. They changed their testimony after PAWC pointed out that this testimony demonstrated that the transfer of the System was in the public interest. *See, e.g.*, PAWC St. 2 pp. 2-4, 6-7; Center St. 1-SR pp. 3-4, Summit St. 1-SR pp. 4-5.

<sup>3</sup> This testimony was later retracted. *See, e.g.*, Center St. 1-SR p. 9; Summit St. 1-SR pp. 4, 8.

the Direct Testimony of Center and Summit because they raised contract and other issues outside the jurisdiction of the Commission. Center and Summit filed Answers to the Motions to Strike on July 21, 2023.

6. On July 18 and 19, 2023, public input hearings were held. A Township Supervisor for Center, who had submitted Direct Testimony in this matter, was allowed to testify at these hearings because he claimed he was testifying in his personal capacity rather than in his capacity as a Township Supervisor. Tr. 211-212.<sup>4</sup> Similarly, a Township Supervisor for Summit, who had submitted Direct Testimony in this matter, was allowed to testify at these hearings because he claimed he was testifying in his personal capacity rather than in his capacity as a Township Supervisor. Tr. 94-95.

7. On July 18, 2023, Center and Summit (as well as PAWC) filed Rebuttal Testimony. On July 20, 2023, the BASA Parties filed Motions to Strike the Rebuttal Testimony of Center and Summit as procedurally improper (*i.e.*, the Townships' Rebuttal Testimony did not rebut any prior testimony; it was essentially a reiteration of Direct Testimony). On July 26, 2023, Center and Summit filed Answers to these Motions to Strike.

8. On July 27, 2023, counsel for PAWC sent the ALJ the Parties' cross-examination matrix for the Evidentiary Hearings scheduled for July 28 and 31, 2023. **Attachment 1.** Among other things, this cross-examination matrix showed that PAWC expected to have moderate cross-examination of the OCA's witnesses, and the BASA Parties expected to have moderate cross-examination of the Townships' witnesses as well as moderate cross-examination of one witness for the OCA. The Townships also expected to have some or moderate cross-examination of the BASA Parties' witnesses as well as some cross-examination of PAWC's witnesses.

---

<sup>4</sup> This Supervisor's wife also testified against the transaction at the public input hearing. Tr. 158-159.

9. An Evidentiary Hearing was held on July 28, 2023. Before Administrative Law Judge Marta Guhl (the “ALJ”) went on the record, counsel for PAWC informed her that a settlement in principle had been reached between PAWC, the BASA Parties, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Commission’s Bureau of Investigation and Enforcement (“I&E”). The beginning of the hearing was delayed so that the terms of the settlement in principle could be shared with the other active parties to the case (*e.g.*, the Townships and Cleveland-Cliffs Steel).

10. When the hearing was re-convened, but before the ALJ went on the record, counsel for PAWC represented that the terms of the settlement in principle had been shared with counsel for Cleveland-Cliffs Steel and counsel for the Townships. Counsel for Cleveland-Cliffs Steel stated that he had not been able to reach his client, so he could not advise the ALJ as to whether his client would join the settlement in principle. Counsel for the Townships represented that, based on their conversations with their clients, the Townships would join the settlement in principle, subject to action at a meeting of the respective Township Board of Supervisors. The ALJ acknowledged on the record that the parties had reached at least a partial settlement. Tr. 239.

11. Based on the representations of counsel before the hearing started, the Parties mutually waived cross-examination of each other’s witnesses. PAWC and the BASA Parties also waived the opportunity to present oral rejoinder testimony. *See, e.g.*, Tr. 242, 255, 276, 279.

12. In addition, based on the representations of counsel before the hearing started, the BASA Parties withdrew their Motions to Strike portions of the Townships’ Direct Testimony, as well as their Motions to Strike the Townships’ Rebuttal Testimony. Tr. 277.

13. On Monday, July 31, 2023, counsel for Cleveland-Cliffs Steel sent an email to the ALJ notifying her that he had conferred with his client, who would not oppose the settlement.

Counsel for Cleveland-Cliffs Steel subsequently filed a letter to that effect with the Secretary's Bureau. **Attachment 2.**

14. On August 1, 2023, the ALJ issued a Briefing Order directing that the Joint Petition for Settlement and Statements in Support (the "Settlement") be filed on or before August 7, 2023, and Main Briefs on any unresolved issues be filed on or before August 7, 2023. Any written opposition to the Settlement was to be filed on or before August 14, 2023.

15. On August 2, 2023, counsel for OCA emailed the ALJ, asking for a modification in the Briefing Order "given that the parties have reached a unanimous settlement." Specifically, counsel for OCA requested that the deadline for filing the Settlement be moved from Monday, August 7 to Monday, August 14, 2023. **Attachment 3.**

16. On Thursday, August 3, 2023, counsel for the Townships sent the ALJ and the Parties an e-mail "clarification" of the position of the Townships. **Attachment 4;** R.D. p. 4. According to that email, the Summit Township Board of Supervisors had adopted the following motion on August 2, 2023:

Summit Township will not oppose, nor will it contest the settlement for the sale of Butler Area Sewer Authority as reached between PA American Water, Office of Small Business Advocate, Office of Consumer Advocate, and the Bureau of Enforcement and Investigations [sic], BASA, the City of Butler and Butler Township. The Summit Township Solicitor is authorized to take all necessary action to implement this Motion. Other than authorizing the Solicitor as set forth above, Summit Township will take no further action in the Protest filed with the Public Utility Commission at Docket No. A-2022-3037047.

17. Counsel for Summit Township represented "I anticipate that Center Township will vote to approve the same Motion at their regularly scheduled meeting of August 9." He therefore joined in the OCA's request that the ALJ modify her Briefing Order. **Attachment 4.**

18. By e-mail of August 4, 2023, the ALJ granted the OCA's request to modify the Briefing Order. The Settlement was now due on August 14, and any written opposition to the

Settlement was due on August 21, 2023. **Attachment 5**. This schedule was confirmed in the ALJ's Post-Hearing Order of August 7, 2023.

19. On August 10, 2023, counsel for the Townships sent the ALJ and the Parties an e-mail notifying them that Center had adopted a motion virtually identical to the above-quoted motion adopted by Summit. **Attachment 6**; R.D. p. 4.

20. The Settlement was filed on August 14, 2023. The signatories were: PAWC, the BASA Parties, the OCA, the OSBA, and I&E (the "Joint Petitioners"). The Settlement explicitly stated that Cleveland-Cliffs Steel and the Townships did not object to the Settlement. Settlement p. 2 n. 1.

21. Neither the Townships, nor anyone else, filed timely written objections to the Settlement on or before August 21, 2023.

22. On September 14, 2023, the ALJ issued her Recommended Decision, recommending that the Application, as modified by the Settlement, be disapproved.

23. On September 21, 2023, PAWC and the BASA Parties filed Exceptions to the Recommended Decision. I&E also filed a letter excepting to the Recommended Decision.

24. On September 26, 2023, the Townships filed their Reply Exceptions opposing the Settlement and asking the Commission to adopt the Recommended Decision.

25. Also on September 26, 2023, the OCA filed limited Reply Exceptions. Unlike the Townships' Reply Exceptions, the OCA's Reply Exceptions do not request that the Commission adopt the Recommended Decision. Instead, they reiterate the OCA's position as stated in its Statement in Support of the Settlement. The OCA's Reply Exceptions contend that the Exceptions of PAWC and the BASA Parties went beyond the Settlement and expressed views of the facts and the law that are not "endorsed" by the Settlement. OCA Reply Exceptions p. 1.

## **II. THE COMMISSION SHOULD STRIKE THE TOWNSHIPS' REPLY EXCEPTIONS**

26. In their Reply Exceptions, the Townships claim that filing Reply Exceptions is procedurally proper, as demonstrated by the case of *Popowsky v. Pa. Pub. Util. Comm'n*, 653 A.2d 1385 (Pa. Cmwlth 1995). That case involved a partial settlement, which the Office of Trial Staff ("OTS") did not oppose. However, OTS continued to challenge the Commission's jurisdiction over the proposed program, and the parties filed main and reply briefs on that issue.

27. The instant case is clearly distinguishable for at least two reasons. First, *Popowsky* did not involve a settlement of all issues. The parties settled some issues but continued to litigate the jurisdictional issue. This case, in contrast, involved a settlement of all issues.

28. Second, in the *Popowsky* case, the OTS continued to litigate the issue of jurisdiction, which is never waived. *Blackwell v. State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989) reargument granted, 573 A.2d 536 (1990), on reargument 589 A.2d 1094 (1991). OTS and the other parties submitted briefs and reply briefs to the administrative law judge on that issue. In this case, in contrast, the Townships filed documents with the ALJ indicating that they did not oppose the Settlement, but now argue that the Application, as modified by the Settlement, is not in the public interest.

### **A. THE COMMISSION SHOULD STRIKE THE TOWNSHIPS' REPLY EXCEPTIONS BECAUSE THE TOWNSHIPS WAIVED THEIR ARGUMENTS BY NOT SUBMITTING THEM TO THE ALJ.**

29. In their Reply Exceptions, the Townships argue that the Commission should adopt the Recommended Decision and disapprove the Application, as modified by the Settlement, because it "did not yield affirmative public benefit[s]". Townships' Reply Exceptions p. 5.

30. The Townships did not offer any of their arguments to the ALJ below. The Townships joined the OCA's request for a modification of the Briefing Schedule, which removed the opportunity to brief any remaining disputed issues. The Townships did not file written objections to the Settlement, despite the opportunity to do so. To the contrary, the Townships explicitly advised the ALJ and all Parties that they did not object to the Settlement and would take no further action in this matter.<sup>5</sup>

31. The Commission has held that it will not grant exceptions or reconsideration based on an argument that the party failed to raise earlier in the proceeding. *See, e.g., Mathieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Opinion and Order entered Apr. 7, 2016) at 10 and cases cited therein; *Pa. Pub. Util. Comm'n v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (Order entered Sept. 1, 2016) at 50-52 and cases cited therein.

32. The Townships waived all their arguments in their Reply Exceptions by not presenting them to the ALJ.

33. Allowing the Townships to change their position, and oppose the Settlement, would put them in a position to file an appeal if the Commission approves the Settlement. The Townships originally opposed the Application, in part, because they wanted to receive some of the proceeds from the transaction. It would not be in the public interest to give the Townships the ability to file an appeal, and seek to pressure PAWC and/or the BASA Parties, to pay them to settle the appeal, when the Townships initially represented to the ALJ and the Joint Petitioners that they did not object to the Settlement.<sup>6</sup>

---

<sup>5</sup> It should be noted that the Townships' Reply Exceptions did not indicate that the Townships had modified their earlier motions not to take further action in this matter. **Attachments 4 and 6.**

<sup>6</sup> The Townships have abused the Commission's process throughout this proceeding, such as by introducing "Rebuttal" Testimony that clearly did not rebut any prior testimony (no testimony was submitted between the date the Townships filed their Direct Testimony and the date they filed their "Rebuttal" Testimony) and by introducing additional testimony by their witnesses at the public input hearing. They should not be permitted to abuse the process further by pulling an about-face on the critical issue of whether to approve the Settlement. This is particularly true,

34. Parties should not be able to obtain what they want through a settlement, and then turn around and oppose that same settlement later in the same proceeding, in an attempt to obtain additional concessions from the other parties to the settlement.

35. Consequently, the Commission should strike the Townships' Reply Exceptions.

**B. THE COMMISSION SHOULD STRIKE THE TOWNSHIPS' REPLY EXCEPTIONS TO AVOID VIOLATING THE DUE PROCESS RIGHTS OF THE JOINT PETITIONERS.**

36. At the hearing, PAWC waived the opportunity to present rejoinder testimony in reliance on the Townships' representations that they would join the Settlement. PAWC also waived the opportunity to cross-examine the witnesses of the OCA and the OSBA in reliance on the Townships' representations that they would join the Settlement. Finally, PAWC did not object to the OCA's request for a modification in the Briefing Order to remove the opportunity to brief unresolved issues. In other words, PAWC waived the opportunity to develop its case further, and to demonstrate weaknesses' in the other Parties' cases, in reliance on the Townships' representation at the hearing that they would join the Settlement.

37. Similarly, at the hearing, the BASA Parties waived the opportunity to present rejoinder testimony in reliance on the Townships' representations that they would join the Settlement. In addition, the BASA Parties waived the opportunity to cross-examine the Townships' witnesses, and the OCA's witnesses, in reliance on the Townships' representations that they would join the Settlement. The BASA Parties withdrew their Motions to Strike portions of the Townships' Direct Testimony, as well as their Motions to Strike the Townships' Rebuttal Testimony, in reliance on the Townships' representations that they would join the Settlement.

---

considering that the Townships seek to change their position in Reply Exceptions, to which PAWC, the BASA Parties, and the other Joint Petitioners are unable to respond.

Finally, the BASA Parties joined the OCA's request for a modification in the Briefing Order to remove the opportunity to brief unresolved issues. **Attachment 5**. In other words, the BASA Parties waived the opportunity to develop their cases further, and to demonstrate weaknesses in the Townships' cases, in reliance on the Townships' representation that they would join the Settlement.

38. After the hearing, PAWC, the BASA Parties, and all other Joint Petitioners waived the opportunity to file Main Briefs on any unresolved issues pursuant to the August 1, 2023 Briefing Order, in reliance on the Townships' representation that they did not oppose the Settlement.

39. "The Commission ... is bound by the due process provisions of constitutional law and by the principles of common fairness. Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, and to offer evidence in explanation or rebuttal." *Smith v. Pa. Pub. Util. Comm'n*, 162 A.2d 80, 83 (Pa. Super. 1960). The record in this case has closed. That record could have been substantially different if PAWC and the BASA Parties had known that the Townships would try to pull an opportunistic about-face later in the proceeding and oppose the Settlement. Allowing the Townships to change their position now would violate the right of PAWC and the BASA Parties to introduce evidence in explanation of their position and in rebuttal of the Townships' position.

40. "The allowance of new claims late in a case raises significant due process concerns. Such concerns arise from the lack of adequate time to respond adequately to adverse positions." *Pa. Publ. Util. Comm'n et al. v. UGI Utilities*, 1994 Pa. PUC LEXIS 138, \*82-83 (May 23, 1984). In this case, the Townships seek to change their position not in Exceptions, but in Reply Exceptions – when the Joint Petitioners would not have an opportunity to respond to the arguments that the

Townships did not raise below. This result would violate the due process rights of PAWC, the BASA Parties and the other Joint Petitioners by denying them an opportunity to be heard on the Townships' new position.

41. The Commission has held that issues raised for the first time in a reply brief cannot be considered because that would violate the due process rights of the other parties, who cannot file a response. *See, e.g., Sattar v. Aqua Pennsylvania, Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered Jul. 28, 2011) p. 6. Similarly, the Townships should not be permitted to change their positions in Reply Exceptions because that would deny the other Parties an opportunity to respond to the Townships' new arguments.

42. To avoid violating the due process rights of PAWC, the BASA Parties, and all other Joint Petitioners, and to send a clear message to litigants before the Commission that "sandbagging"<sup>7</sup> of this nature will not be tolerated, the Commission should strike the Townships' Reply Exceptions.

---

<sup>7</sup> *Sandbagging* has found its way into the writings of our highest court. Justice Scalia once defined *sandbagging* as "suggesting or permitting, for strategic reasons, that the trial court pursue a certain course, and later—if the outcome is unfavorable—claiming that the course followed was reversible error." *Freytag v. C.I.R.*, 501 U.S. 868, 895 (1991) (Scalia, J., concurring). Other Supreme Court justices who have used *sandbagging* in their opinions include:

- Justice Stevens, in *U.S. v. Williams*, 504 U.S. 36, 59 n. 5 (1992) (Stevens, J., dissenting): "Moreover, the Government's failure to object to the application of the *Page* rule deprived the Court of Appeals of an opportunity to reexamine the validity of that rule in the light of intervening developments in the law. 'Sandbagging' is just as improper in an appellate court as in a trial court."
- Justice O'Connor, in *Murray v. Carrier*, 477 U.S. 478, 491–92 (1986): "Nor do we agree that the possibility of 'sandbagging' vanishes once a trial has ended in conviction, since appellate counsel might well conclude that the best strategy is to select a few promising claims for airing on appeal, while reserving others for federal habeas review should the appeal be unsuccessful."
- Justice Thurgood Marshall, in *Thomas v. Arn*, 474 U.S. 140, 147–48 (1985): "The Sixth Circuit's rule, by precluding appellate review of any issue not contained in objections, prevents a litigant from 'sandbagging' the district judge by failing to object and then appealing."

**C. THE TOWNSHIPS SHOULD BE EQUITABLY ESTOPPED FROM ASSERTING A POSITION IN THEIR REPLY EXCEPTIONS THAT DIRECTLY CONTRADICTS THEIR POSITION BEFORE THE ALJ.**

43. The elements of equitable estoppel are: (1) an inducement, whether by act, representation, or silence when one ought to speak, that causes one to believe the existence of certain facts; (2) justifiable reliance on that inducement; and (3) prejudice to the one who relies if the inducer is permitted to deny the existence of such facts. *Guardian Life Ins. Co. of America v. Zerance*, 505 Pa. 345, 479 A.2d 949 (1984); *Sabino v. Junio*, 441 Pa. 222, 272 A.2d 508 (1971).

44. The elements of equitable estoppel have been met in this case:

A. By representing that they would join the Settlement, the Townships induced PAWC and the BASA Parties to decline the opportunity to introduce rejoinder testimony. In addition, by representing that they would join the Settlement, the Townships induced the BASA Parties to waive cross-examination and withdraw their Motions to Strike portions of the Townships' Direct Testimony and their Motions to Strike the Townships' entire Rebuttal Testimony.

B. PAWC and the BASA Parties justifiably relied on the Townships' inducement; they believed that they had achieved a Settlement that addressed the Townships' concerns about the Application. In addition, the Board of Supervisors of each Township adopted a motion that said (a) the Township did not oppose the Settlement, and (b) the Township would take no further action in this matter. The Settlement has not changed since that motion was adopted. PAWC and the BASA Parties had no reason to suspect that the Townships would subsequently try to pull an about-face and oppose a Settlement that had not changed.

C. PAWC and the BASA Parties would be prejudiced if the Townships were permitted to oppose the Settlement in Reply Exceptions, when PAWC and the BASA

Parties cannot respond to the Townships' arguments, cannot introduce any evidence into the record to address those arguments, and have withdrawn motions to strike portions of the Townships' testimony.

45. Parties should be bound by their representations to the other Parties and the tribunal.

46. Since all of the elements of equitable estoppel have been satisfied, the Townships should be estopped from filing Reply Exceptions that oppose the Settlement. Consequently, the Commission should Strike the Townships' Reply Exceptions.

**D. THE COMMISSION SHOULD STRIKE THE TOWNSHIPS' REPLY EXCEPTIONS TO FURTHER THE COMMISSION'S POLICY ENCOURAGING SETTLEMENTS.**

47. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources.

48. This case involves a settlement that was unanimous when submitted to the ALJ. At that time, the Townships did not oppose the settlement. Now, the Townships seek to do an about-face and oppose the settlement.

49. Allowing a party to change its position after an ALJ issues a decision on a settlement would seriously undermine the Commission's policy of promoting settlements. Parties would be reluctant to enter into settlements if other parties to the case could change their position on the settlement prior to a Final Commission Order on the settlement. Parties would need to fully litigate their cases, in order to protect themselves from being ambushed later in the proceedings by parties who change their position after the ALJ issues a decision. This result would be contrary to the public interest because it would result in a waste of considerable private and public resources as parties fully litigate cases that would otherwise be settled.

50. Consistent with its policy of promoting settlements, the Commission should not allow the Townships to advocate a position on the Settlement during the Exceptions stage that is completely contrary to their position when the Settlement was submitted to the ALJ. Instead, the Commission should strike the Townships' Reply Exceptions.

### **III. REQUEST FOR AN EXPEDITED DEADLINE FOR FILING ANSWERS**

51. 52 Pa. Code § 5.103(c) provides that a party has twenty days from the date of service of a motion in which to answer or object to that motion, unless the period of time is otherwise fixed by the Commission.

52. The Commission should fix an expedited time frame for filing an answer to the instant Motion, due to the statutory deadline in this case, which requires the Commission to enter a Final Order by November 23, 2023.

53. In order to facilitate a timely decision by the Commission, the Joint Movants respectfully request that the Commission require answers to this Motion to be filed expeditiously (specifically, by Monday, October 2, 2023).

### **IV. CONCLUSION AND REQUEST FOR RELIEF**

For all of the reasons set forth above, Pennsylvania-American Water Company, the Butler Area Sewer Authority, the City of Butler and the Township of Butler respectfully request that the Pennsylvania Public Utility Commission:

(1) establish an expedited deadline for filing Answers to this Motion (specifically, by Monday, October 2, 2023);

(2) strike the “Reply to Exceptions Filed by Pennsylvania-American Water Company, Butler Area Sewer Authority, the Township of Butler and the City of Butler, Submitted Jointly by Protestants, Center Township and Summit Township.”

Respectfully submitted,



---

David P. Zambito, Esq. (I.D. No. 80017)  
Jonathan P. Nase, Esq. (I.D. No. 44003)  
Cozen O’Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: (717) 703-5892  
E-mail: dzambito@cozen.com  
E-mail: jnase@cozen.com

---

Thomas S. Wyatt, Esq. (I.D. No. 89342)  
Matthew S. Olesh, Esq. (I.D. No. 206553)  
Sydney N. Melillo, Esquire (PA I.D. 328031)  
Obermayer Rebmann Maxwell & Hippel,  
LLP  
Centre Square West  
1400 Market Street, Suite 3400  
Philadelphia, PA 19102  
Telephone: (215) 665-304  
E-mail: Thomas.Wyatt@obermayer.com  
E-mail: Matthew.Olesh@obermayer.com  
E-mail: Sydney.Melillo@obermayer.com

Counsel for *Pennsylvania-American Water Company*

Counsel for *Butler Area Sewer Authority, City of Butler, and Township of Butler*

Date: September 27, 2023

(2) strike the “Reply to Exceptions Filed by Pennsylvania-American Water Company, Butler Area Sewer Authority, the Township of Butler and the City of Butler, Submitted Jointly by Protestants, Center Township and Summit Township.”

Respectfully submitted,



---

David P. Zambito, Esq. (I.D. No. 80017)  
Jonathan P. Nase, Esq. (I.D. No. 44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: (717) 703-5892  
E-mail: dzambito@cozen.com  
E-mail: jnase@cozen.com

---

Thomas S. Wyatt, Esq. (I.D. No. 89342)  
Matthew S. Olesh, Esq. (I.D. No. 206553)  
Sydney N. Melillo, Esquire (PA I.D. 328031)  
Obermayer Rebmann Maxwell & Hippel,  
LLP  
Centre Square West  
1400 Market Street, Suite 3400  
Philadelphia, PA 19102  
Telephone: (215) 665-304  
E-mail: Thomas.Wyatt@obermayer.com  
E-mail: Matthew.Olesh@obermayer.com  
E-mail: Sydney.Melillo@obermayer.com

*Counsel for Pennsylvania-American Water  
Company*

*Counsel for Butler Area Sewer Authority,  
City of Butler, and Township of Butler*

Date: September 27, 2023

**ATTACHMENT 1**

## Nase, Jonathan

---

**From:** Nase, Jonathan  
**Sent:** Thursday, July 27, 2023 3:57 PM  
**To:** 'Guhl, Marta'; Delvillar, Shalea  
**Cc:** Zambito, David; 'Liz R Triscari'; 'Erin Fure'; Wyatt, Thomas; Olesh, Matthew; 'Melillo, Sydney'; 'Breitman, Harrison W.'; Gannon, Erin L.; 'Gray, Steven'; 'Wright, Carrie'; 'Kurt Boehm'; 'Gallagher Law Group'  
**Subject:** PAWC-BASA Section 1329 Application  
**Attachments:** LEGAL 64890421v1 PAWC - BASA - Cross-examination matrix (2).DOCX

Your Honor:

On behalf of all of the parties to this proceeding, attached please find the cross-examination matrix for the evidentiary hearings to be held tomorrow and, if necessary, Monday.

Thank you.

Jonathan Nase



**Jonathan Nase**  
**Member | Cozen O'Connor**  
17 North Second Street Suite 1410 | Harrisburg, PA 17101  
P: 717-773-4191 F: 215-372-2340  
Email | Bio | Map | cozen.com

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.*

Cross-Examination Matrix

Party	Party/Witness															
	PAWC				BASA, City of Butler, Township of Butler					OCA		I&E	OSBA	Center	Summit	Cleveland-Cliffs Steel
	Fogelsanger	Hufton	Everette	Weinert	Sybert	Walker	McKee	Dandoy	Zarnick	DeAngelo	Smith	Cline	Higgins	Pringle	Adams	N/A
PAWC	N/A	N/A	N/A	N/A	N	N	N	N	N	M	M	N	M	N	N	N/A
BASA, City of Butler, Township of Butler	N	N	N	N	N/A	N/A	N/A	N/A	N/A	N	S	N	N	M	M	N/A
OCA	S	N	S	N	M	N	N	S	N	N/A	N/A	N	N	N	N	N/A
I&E	N	N	N	N	N	N	N	N	N	N	N	N/A	N	N	N	N/A
OSBA	N	N	S	N	N	N	N	N	N	N	N	N	N/A	N	N	N/A
Center	S	S	S	S	M	S	S	M	M	N	N	N	N	N/A	N/A	N/A
Summit	S	S	S	S	M	S	S	M	M	N	N	N	N	N/A	N/A	N/A
Cleveland-Cliffs Steel	S	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N/A

Cross-examination key:

N – no cross-examination

S – some cross-examination (15 minutes or less)

M – moderate cross-examination (15-60 minutes)

E – Extensive cross-examination (more than 60 minutes)

**ATTACHMENT 2**

## Nase, Jonathan

---

**From:** Kurt Boehm <kboehm@bklawfirm.com>  
**Sent:** Monday, July 31, 2023 10:35 AM  
**To:** Guhl, Marta; Melillo, Sydney; Delvillar, Shalea; McNeal, Pamela  
**Cc:** Liz R Triscari; Erin Fure; Zambito, David; Nase, Jonathan; OCAPAWCButler@paoca.org; Gray, Steven; Wright, Carrie; Gallagher, Michael D. and Gallagher, Sean M.; whr19606@ptd.net; Jody Kyler Cohn; Wyatt, Thomas; Olesh, Matthew  
**Subject:** Docket No. A-2022-3037047- Cleveland Cliffs position on Stipulation

**\*\*EXTERNAL SENDER\*\***

Judge Guhl- Following up on our conversation during the hearing on Friday, I was able to consult with my client over the weekend. Cleveland Cliffs does not oppose the Stipulation.

Thank you,

Kurt Boehm

**Kurt J. Boehm, Esq.**  
BOEHM, KURTZ & LOWRY

**Phone:** 513-421-2255  
**Mobile:** 513-290-6683

36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[www.bklawfirm.com](http://www.bklawfirm.com)

**ATTACHMENT 3**

## Nase, Jonathan

---

**From:** Breitman, Harrison W. <HBreitman@paoca.org>  
**Sent:** Wednesday, August 2, 2023 12:45 PM  
**To:** Guhl, Marta; 'Delvillar, Shalea'  
**Cc:** OCAPAWCButler; Hoover, Christine Maloni; Triscari, Elizabeth Rose; erin.fure@amwater.com; Zambito, David; Nase, Jonathan; Wright, Carrie B.; Gray, Steven C.; whr19606@ptd.net; Wyatt, Thomas; Olesh, Matthew; Melillo, Sydney; attys@gallagher.legal; kboehm@bklawfirm.com; jkylern@bklawfirm.com  
**Subject:** Application of PAWC to Acquire BASA - Docket No.: A-2022-3037047 - Joint Statutory Advocate Request to Modify Joint Petition for Settlement/Statements in Support Deadline

**\*\*EXTERNAL SENDER\*\***

Your Honor,

The OCA, I&E, and OSBA have reviewed the August 1, 2023 Briefing Order in the above-referenced case and respectfully request that Your Honor modify the deadline for the Joint Petition for Settlement and accompanying Statements in Support from Monday, August 7, 2023 to Monday, August 14, 2023 given that the parties have reached a unanimous settlement. I have also been informed that PAWC does not oppose this request.

Please let us know if you have any questions, concerns, or need any additional information.

Respectfully,  
Harrison W. Breitman, Esq.  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101  
(P) 717-780-4536  
(F) 717-783-7152  
(C) 717-497-3346

---

OCA Confidentiality Notice: This e-mail and any attachments are intended solely for the exclusive and confidential use of the sender and intended recipient(s). If you have received this e-mail in error, please do not review, transmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it. Please notify the sender by return e-mail and delete this message, any attachments, and all copies from your system immediately. Thank you.

This e-mail may consist of or include advisory, consultative, and/or deliberative material and/or attorney-client communications and/or work product. As such, this e-mail and any attachments, or portions thereof, may be privileged and confidential.

**ATTACHMENT 4**

**Nase, Jonathan**

---

**From:** Gallagher Law Group <attys@gallagher.legal>  
**Sent:** Thursday, August 3, 2023 11:17 AM  
**To:** 'Athena Delvillar'; 'Carrie B. Wright'; Zambito, David; 'Elizabeth Rose Triscari'; 'Erin K. Fure'; 'Erin L. Gannon'; 'Harrison W. Breitman'; 'Jody Kyler Cohn'; Nase, Jonathan; 'Kurt J. Boehm'; 'marta guhl'; 'Matthew S. Olesh'; 'Richard A. Kanaskie'; 'Steven C. Gray'; 'Sydney N. Melillo'; 'Thomas Wyatt'; ocapawcbutler@paoca.org  
**Cc:** Sean Gallagher  
**Subject:** BASA - PUC

**\*\*EXTERNAL SENDER\*\***

Dear Judge Guhl and Counselors:

This email is being in clarification of the position of Center Township and Summit Township with respect to the settlement of this matter by the parties.

Last night at the regular meeting of the Summit Township Board of Supervisors, the Board of Supervisors unanimously voted to adopt the following Motion:

*Summit Township will not oppose, nor will it contest the settlement for the sale of Butler Area Sewer Authority as reached between Pa American Water, Office of Small Business Advocate, Office of Consumer Advocate, and the Bureau of Enforcement and Investigations, BASA, the City of Butler and Butler Township. The Summit Township Solicitor is authorized to take all necessary action to implement this Motion. Other than authorizing the Solicitor as set forth above, Summit Township will take no further action in the Protest filed with the Public Utility Commission at Docket No. A-2022-3037047.*

I anticipate that Center Township will vote to approve the same Motion at their regularly scheduled meeting of August 9, 2023. I would also therefore request that the settlement documents be due on August 14, 2023, as opposed to August 7, 2023.

I have discussed this matter with counsel for PAWC and counsel for BASA, the City of Butler and Butler Township.

If there is anything else Your Honor requires from my office, please let me know.

Respectfully,

Michael D. Gallagher



110 East Diamond Street, Suite 101  
Butler, PA 16001  
[attys@gallagher.legal](mailto:attys@gallagher.legal)  
724-282-3141

**ATTACHMENT 5**

## Nase, Jonathan

---

**From:** Guhl, Marta <mguhl@pa.gov>  
**Sent:** Friday, August 4, 2023 8:54 AM  
**To:** Olesh, Matthew; Breitman, Harrison W.; Delvillar, Shalea  
**Cc:** OCAPAWCButler; Hoover, Christine Maloni; Triscari, Elizabeth Rose; erin.fure@amwater.com; Zambito, David; Nase, Jonathan; Wright, Carrie; Gray, Steven; whr19606@ptd.net; Wyatt, Thomas; Melillo, Sydney; attys@gallagher.legal; kboehm@bkllawfirm.com; jkylercohn@bkllawfirm.com  
**Subject:** RE: [External] RE: Application of PAWC to Acquire BASA - Docket No.: A-2022-3037047 - Joint Statutory Advocate Request to Modify Joint Petition for Settlement/Statements in Support Deadline  
**Importance:** High

**\*\*EXTERNAL SENDER\*\***

Dear Counsel,

I have considered the request and I will grant the request to modify the deadline for the Joint Settlement Petition and Statements in Support from August 7, 2023 to August 14, 2023. I will also move the date when written opposition to the settlement is due to August 21, 2023. With the additional time, I will expect a high quality for the Statements in Support. **There will be no additional modifications to the dates.**

Sincerely,  
ALJ Guhl

---

**From:** Olesh, Matthew <matthew.olesh@obermayer.com>  
**Sent:** Thursday, August 3, 2023 12:34 PM  
**To:** Breitman, Harrison W. <HBreitman@paoca.org>; Guhl, Marta <mguhl@pa.gov>; Delvillar, Shalea <sdelvillar@pa.gov>  
**Cc:** OCAPAWCButler <OCAPAWCButler@paoca.org>; Hoover, Christine Maloni <CHoover@paoca.org>; Triscari, Elizabeth Rose <Elizabeth.Triscari@amwater.com>; erin.fure@amwater.com; Zambito, David P. <dzambito@cozen.com>; Jonathan Nase <jnase@cozen.com>; Wright, Carrie <carwright@pa.gov>; Gray, Steven <sgray@pa.gov>; whr19606@ptd.net; Wyatt, Thomas <thomas.wyatt@obermayer.com>; Melillo, Sydney <sydney.melillo@obermayer.com>; attys@gallagher.legal; kboehm@bkllawfirm.com; jkylercohn@bkllawfirm.com  
**Subject:** [External] RE: Application of PAWC to Acquire BASA - Docket No.: A-2022-3037047 - Joint Statutory Advocate Request to Modify Joint Petition for Settlement/Statements in Support Deadline

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Your Honor,

BASA, the City of Butler and the Township of Butler join in the below request.

Respectfully,

**Matthew Olesh**

**Obermayer Rebmann Maxwell & Hippel LLP**

Direct: 215.665.3043

Cell: 814.414.1163

**From:** Breitman, Harrison W. <[HBreitman@paoca.org](mailto:HBreitman@paoca.org)>

**Sent:** Wednesday, August 2, 2023 12:45 PM

**To:** Guhl, Marta <[mguhl@pa.gov](mailto:mguhl@pa.gov)>; 'Delvillar, Shalea' <[sdelvillar@pa.gov](mailto:sdelvillar@pa.gov)>

**Cc:** OCAPAWCButler <[OCAPAWCButler@paoca.org](mailto:OCAPAWCButler@paoca.org)>; Hoover, Christine Maloni <[CHoover@paoca.org](mailto:CHoover@paoca.org)>; Triscari, Elizabeth Rose <[Elizabeth.Triscari@amwater.com](mailto:Elizabeth.Triscari@amwater.com)>; [erin.fure@amwater.com](mailto:erin.fure@amwater.com); Zambito, David P. <[dzambito@cozen.com](mailto:dzambito@cozen.com)>; [jnase@cozen.com](mailto:jnase@cozen.com); Wright, Carrie B. <[carwright@pa.gov](mailto:carwright@pa.gov)>; Gray, Steven C. <[sgray@pa.gov](mailto:sgray@pa.gov)>; [whr19606@ptd.net](mailto:whr19606@ptd.net); Wyatt, Thomas <[thomas.wyatt@obermayer.com](mailto:thomas.wyatt@obermayer.com)>; Olesh, Matthew <[matthew.olesh@obermayer.com](mailto:matthew.olesh@obermayer.com)>; Melillo, Sydney <[sydney.melillo@obermayer.com](mailto:sydney.melillo@obermayer.com)>; [attys@gallagher.legal](mailto:attys@gallagher.legal); [kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com); [kylercohn@bkllawfirm.com](mailto:kylercohn@bkllawfirm.com)

**Subject:** Application of PAWC to Acquire BASA - Docket No.: A-2022-3037047 - Joint Statutory Advocate Request to Modify Joint Petition for Settlement/Statements in Support Deadline

**WARNING:** This email originated from an external sender. Exercise caution before clicking links or opening attachments. When in doubt, contact the IT department.

Your Honor,

The OCA, I&E, and OSBA have reviewed the August 1, 2023 Briefing Order in the above-referenced case and respectfully request that Your Honor modify the deadline for the Joint Petition for Settlement and accompanying Statements in Support from Monday, August 7, 2023 to Monday, August 14, 2023 given that the parties have reached a unanimous settlement. I have also been informed that PAWC does not oppose this request.

Please let us know if you have any questions, concerns, or need any additional information.

Respectfully,

Harrison W. Breitman, Esq.  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101  
(P) 717-780-4536  
(F) 717-783-7152  
(C) 717-497-3346

---

OCA Confidentiality Notice: This e-mail and any attachments are intended solely for the exclusive and confidential use of the sender and intended recipient(s). If you have received this e-mail in error, please do not review, transmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it. Please notify the sender by return e-mail and delete this message, any attachments, and all copies from your system immediately. Thank you.

This e-mail may consist of or include advisory, consultative, and/or deliberative material and/or attorney-client communications and/or work product. As such, this e-mail and any attachments, or portions thereof, may be privileged and confidential.

**ATTACHMENT 6**

## Nase, Jonathan

---

**From:** Gallagher Law Group <attys@gallagher.legal>  
**Sent:** Thursday, August 10, 2023 10:52 AM  
**To:** 'Athena Delvillar'; 'Carrie B. Wright'; Zambito, David; 'Elizabeth Rose Triscari'; 'Erin K. Fure'; 'Erin L. Gannon'; 'Harrison W. Breitman'; 'Jody Kyler Cohn'; Nase, Jonathan; 'Kurt J. Boehm'; 'marta guhl'; 'Matthew S. Olesh'; 'Richard A. Kanaskie'; 'Steven C. Gray'; 'Sydney N. Melillo'; 'Thomas Wyatt'; ocapawcbutler@paoca.org  
**Cc:** Sean Gallagher  
**Subject:** FW: BASA - PUC

**\*\*EXTERNAL SENDER\*\***

**From:** Gallagher Law Group  
**Sent:** Thursday, August 3, 2023 11:17 AM  
**To:** 'Athena Delvillar' <sdelvillar@pa.gov>; 'Carrie B. Wright' <carwright@pa.gov>; 'David P. Zambito' <dzambito@cozen.com>; 'Elizabeth Rose Triscari' <elizabeth.triscari@amwater.com>; 'Erin K. Fure' <erin.fure@amwater.com>; 'Erin L. Gannon' <egannon@paoca.org>; 'Harrison W. Breitman' <hbreitman@paoca.org>; 'Jody Kyler Cohn' <jkylercohn@bkllawfirm.com>; 'Jonathan Nase' <jnase@cozen.com>; 'Kurt J. Boehm' <kboehm@bkllawfirm.com>; 'marta guhl' <mguhl@pa.gov>; 'Matthew S. Olesh' <matthew.olesh@obermayer.com>; 'Richard A. Kanaskie' <rkanaskie@pa.gov>; 'Steven C. Gray' <sgray@pa.gov>; 'Sydney N. Melillo' <sydney.melillo@obermayer.com>; 'Thomas Wyatt' <thomas.wyatt@obermayer.com>; ocapawcbutler@paoca.org  
**Cc:** Sean Gallagher <smgallagher@gallagher.legal>  
**Subject:** BASA - PUC

Dear Judge Guhl and Counselors:

Last night (August 9, 2023) at the regular meeting of the Center Township Board of Supervisors, the Board of Supervisors who were present, unanimously voted to adopt the following Motion:

*Center Township will not oppose, nor will it contest the settlement for the sale of Butler Area Sewer Authority as reached between Pa American Water, Office of Small Business Advocate, Office of Consumer Advocate, and the Bureau of Enforcement and Investigations, BASA, the City of Butler and Butler Township. The Center Township Solicitor is authorized to take all necessary action to implement this Motion. Other than authorizing the Solicitor as set forth above, Center Township will take no further action in the Protest filed with the Public Utility Commission at Docket No. A-2022-3037047.*

If there is anything else Your Honor requires from my office, please let me know.

Respectfully,

Michael D. Gallagher



GALLAGHER  
LAW  
GROUP

110 East Diamond Street, Suite 101

Butler, PA 16001

[attys@gallagher.legal](mailto:attys@gallagher.legal)

724-282-3141