

October 11, 2023

VIA EFILING
Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17101

**Re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Borough of Brentwood's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of Brentwood, Allegheny County, Pennsylvania
Docket No. A-2021-3024058**

Dear Secretary Chiavetta:

Please find enclosed for filing the Petition to Intervene of the Allegheny County Sanitary Authority. If you have any questions or concerns, please feel free to contact me at the address listed above.

Very Truly Yours,

SALZMANN HUGHES, P.C.

/s/ Scott T. Wyland
Scott T. Wyland

Enclosure

cc: The Honorable Katrina L. Dunderdale (via email to: kdunderdal@pa.gov and nmiskanic@pa.gov and first-class mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa C.S. § 1102(a), for approval of :
(1) the transfer, by sale, of substantially all of Borough of :
Brentwood’s assets, properties and rights related to its : Docket No. A-2021-3024058
wastewater collection and conveyance system to :
Pennsylvania-American Water Company, and (2) the :
rights of Pennsylvania-American Water Company to :
begin to offer or furnish wastewater service to the public :
in the Borough of Brentwood, Allegheny County :

**PETITION TO INTERVENE
OF THE ALLEGHENY COUNTY SANITARY AUTHORITY**

Pursuant to 52 Pa. Code § 5.71, the Pennsylvania Public Utility Commission’s (“Commission”) notice published on September 30, 2023, in the Pennsylvania Bulletin, 53 Pa.B. 6139, and the September 14, 2023, Secretarial Letter in the above-captioned matter, the Allegheny County Sanitary Authority (“ALCOSAN”), a municipal authority organized under the Municipality Authorities Act, as amended, 53 Pa.C.S.A. §§ 5601-5623, hereby petitions to intervene in the above-captioned proceeding. In support thereof, ALCOSAN submits as follows:

1. The name and contact information of the Petitioner is as follows:

Allegheny County Sanitary Authority
3300 Preble Avenue
Pittsburgh, PA 15233

2. The names and contact information for ALCOSAN’s counsel for receiving service

of all documents in this proceeding are:

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ALCOSAN agrees to accept electronic service to the attorneys listed above.

3. On March 31, 2023, Pennsylvania-American Water Company (“PAWC”) filed an application for the Commission’s approval to acquire substantially all of the assets, properties and rights related to the wastewater collection system owned by the Borough of Brentwood (“Brentwood”) as follows: (1) the transfer, by sale, of substantially all of Brentwood’s assets, properties and rights related to its wastewater collection and conveyance system to PAWC, and (2) the rights of PAWC to begin to offer or furnish wastewater service to the public in Brentwood (the “Application”).

4. On May 31, 2023, PAWC filed an Amendment to the Application.

5. Section 1102(a) of the Public Utility Code requires that PAWC seek and obtain Commission approval in the form of a Certificate of Public Convenience to transfer substantially all of the assets, properties, and rights related to the wastewater collection system owned by Brentwood (the “System”) to PAWC. 66 Pa. C.S. §1102(a).

6. Pursuant to Section 1103(a) of the Public Utility Code, the Commission shall grant a certificate of public convenience “only if the [C]ommission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience,

or safety of the public.” 66 Pa.C.S.A. § 1103(a).

7. In granting a certificate of public convenience, Section 1103(a) of the Public Utility Code authorizes the Commission to “impose such conditions as it may deem to be just and reasonable.” *Id.*

8. ALCOSAN provides wastewater treatment and conveyance services to 83 municipalities, including the City of Pittsburgh (“Pittsburgh”) and Brentwood.

9. ALCOSAN’s service area extends over 310 square miles with nearly 900,000 individuals relying on its services.

10. Through this Application, PAWC seeks approval of, *inter alia*, the Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood, as Seller, and PAWC, as Buyer, dated as of December 22, 2020, and amended on March 2, 2023 (collectively the “APA”). The APA is attached to the Application as Appendix A-24-a. Application at ¶ 3.a.

11. After PAWC and Brentwood executed the APA, ALCOSAN engaged in numerous meetings with PAWC and Brentwood that resulted in the Cooperation and Allocation of Responsibilities Agreement between Brentwood and PAWC dated March 2, 2023 (the “Cooperation Agreement”). The Cooperation Agreement is attached as Appendix A-25.3 to the Application. Application at ¶ 3.d.

12. PAWC’s Application also seeks the Commission’s approval of the Cooperation Agreement.

13. As set forth in the Cooperation Agreement, ALCOSAN, Pittsburgh, and Brentwood are parties to The Pittsburgh Zone Project Agreement of December 1, 1949 (the “Z Agreement”). The Z Agreement is attached as Exhibit A to the Cooperation Agreement. Cooperation Agreement

at Recital B.

14. Pursuant to the Z Agreement, ALCOSAN is designated as the “Sewage Agency,” and serves as the exclusive provider for sanitary sewage disposal and treatment for Brentwood, Pittsburgh, and its other 81 customer municipalities. Cooperation Agreement at Recital C.

15. The Z Agreement serves as the foundational document for ALCOSAN’s entire service area and defines the relationship between and among ALCOSAN, Pittsburgh, and Brentwood.

16. To finance, construct, and maintain its sewage disposal system, ALCOSAN has agreements identical to the Z Agreement with each of its original customer municipalities and agreements substantially similar to the Z Agreement with subsequent customer municipalities, under which ALCOSAN is also designated as their exclusive provider for sanitary sewage disposal and treatment.

17. Further, the Z Agreement is necessary for ALCOSAN to meet its obligations under the Modified Consent Decree entered into among ALCOSAN, the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Allegheny County Health Department, including implementation of ALCOSAN’s Clean Water Plan and Regionalization Program. Cooperation Agreement at Recitals E-F.

18. The Cooperation Agreement sets forth the agreements regarding ALCOSAN, the Modified Consent Decree, and the obligations, rights, payment, billing, and other terms of the Z Agreement related to the APA and PAWC’s acquisition of the System.

19. ALCOSAN is a third-party beneficiary of the Cooperation Agreement “with rights to enforce the respective covenants and obligations of PAWC and [Brentwood] as set forth in this Agreement.” Cooperation Agreement at Section 10.

20. Moreover, the Cooperation Agreement states:

The Parties acknowledge and agree that this Agreement is subject to approval by the PUC either (a) as deemed approved within thirty (30) days after PAWC filed a copy of this Agreement, fully executed by the Parties, with the PUC, or (b) if the PUC institutes an investigation, at such later time as the PUC grants its approval. **The Parties will not object to ALCOSAN's participation in any PUC proceedings regarding the [APA], this Agreement or any related matters that potentially affect the Z Agreement or ALCOSAN.**

Cooperation Agreement at Section 15 (emphasis added).

21. The Cooperation Agreement further provides that:

D. Pursuant to the [APA] and this Agreement, upon PAWC's acquisition of the System, PAWC will be allocated certain of [Brentwood]'s rights and will be allocated certain of [Brentwood]'s obligations under the Z Agreement. [Brentwood] will remain primarily responsible for its rights and obligations under the Z Agreement subject to the terms set forth in this Agreement.

Cooperation Agreement at Recital D.

22. Section 2.a. of the Cooperation Agreement sets forth certain terms regarding ALCOSAN, the Z Agreement, and the Modified Consent Decree. Cooperation Agreement at Section 2.a.

23. Under Section 2.a.(i), Brentwood and PAWC agree that pursuant to the Z Agreement, "ALCOSAN shall be the sole and exclusive agency, during the entire life of the Z Agreement, to provide sewage treatment and disposal services to [Brentwood] and the System and to all of the water users therein who or which discharge sewage or wastes into the System." Cooperation Agreement at Section 2.a.(i).

24. Brentwood and PAWC further agree that "ALCOSAN shall be permitted and authorized to impose upon and collect from all such users the sewage service charges as set forth in the Z Agreement without interruption or modification, and consistent with historical custom and

practice.” *Id.*

25. Under Section 2.a.(ii) of the Cooperation Agreement, Brentwood and PAWC expressly acknowledge the essential role of the Z Agreement and ALCOSAN’s Z Agreements with each of its municipal customers, and expressly agree to support the implementation and adherence to the Z Agreement. Cooperation Agreement at Section 2.a.(ii).

26. Specifically, Section 2.a.(ii) provides as follows:

In reference to the Z Agreement, and all terms and provision set forth therein, the Parties acknowledge the status and essential role of the Z Agreement, together with those similar agreements now or in the future entered into between ALCOSAN and other municipal authorities (the “Other Z Agreements”), in serving the sewage disposal and treatment needs of the communities within the ALCOSAN Sewage Disposal System (the “Sewage Disposal System”). The parties agree and covenant at all times to act in good faith to recognize and support ongoing implementation of, and adherence to, the Z Agreement in the same manner as historically implemented, and further agree and covenant not to take any action, directly or indirectly, to challenge, disrupt, or undermine the Z Agreement or Other Z Agreements, nor will they authorize or permit or support in any manner, directly or indirectly, any other party to challenge, disrupt, undermine, or make any claim under or against the Z Agreement or the Other Z Agreements.

Id.

27. Pursuant to Paragraph 2.b. of the Cooperation Agreement, Brentwood and PAWC acknowledge the recitals, rights, and obligations of Pittsburgh, the Pittsburgh Water and Sewer Authority (“PWSA”), and ALCOSAN under the Z Agreement.

28. Sections 2.c. and 2.d. of the Cooperation Agreement set forth Brentwood’s allocation of rights to PAWC and PAWC’s obligations under the Z Agreement.

29. Sections 2.e. and 2.f. establish Brentwood’s retained obligations and rights under the Z Agreement.

30. Paragraph 4 of the Cooperation Agreement sets forth the terms regarding the

preservation and enforcement of the Z Agreement and provides, in part, that “The Z Agreement shall continue in full force and effect and the terms thereof are hereby ratified and confirmed in all respects.”

31. ALCOSAN therefore clearly has an interest in the above-captioned matter, and requests permission to Intervene to ensure that PAWC and Brentwood honor their obligations under the Z Agreement and Cooperation Agreement and that if the Commission approves the Application, the Commission includes in its Order that the terms of the Z Agreement, the Other Z Agreements, and the Cooperation Agreement will remain unchanged.

32. ALCOSAN has a right to intervene in this proceeding pursuant to 52 Pa. Code § 5.72(a) and the express agreement of PAWC and Brentwood set forth in Section 15 of the Cooperation Agreement.

33. The Commission’s regulations permit intervention where a person has an interest in the proceeding that “may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code § 5.72(a)(2). The regulations also permit participation of the person where it is in the public interest. 52 Pa. Code § 5.72(a)(3). “Person” includes governmental entities, municipalities, or other political subdivisions. 52 Pa. Code § 1.8.

34. ALCOSAN, therefore, on behalf of itself, its municipal customers, and the individuals who rely on its services, has an interest in ensuring the continued validity of the Z Agreement and the Other Z Agreements as set forth in the Cooperation Agreement.

35. ALCOSAN has a direct and substantial interest in the issues raised in this proceeding and, accordingly, seeks to intervene in this proceeding to protect those interests, namely the Z Agreement, the Other Z Agreements, and the Cooperation Agreement, together with

its continuing ability to comply with the Modified Consent Decree. ALCOSAN's interests in this matter are unique from and not adequately represented by other parties that may seek to intervene or those that are presently parties to the proceeding.

36. ALCOSAN's intervention is in the public interest. ALCOSAN is uniquely positioned to aid the Commission in the significance and arrangements regarding ALCOSAN's service, the Z Agreement, and the Other Z Agreements, as well as with respect to ALCOSAN's obligations under the Modified Consent Decree, which remain subject to the jurisdiction of the United States District Court for the Western District of Pennsylvania.

37. ALCOSAN timely submits the instant Petition in accordance with the October 16, 2023, deadline for filing petitions to intervene set by the Commission.

38. ALCOSAN reserves the right to refine its position upon consideration of the testimony and discovery submitted going forward.

WHEREFORE, ALCOSAN respectfully requests that the Commission grant its Petition to Intervene and, if it approves the Application, require that PAWC and Brentwood honor their obligations under the terms of the Z Agreement and the Cooperation Agreement, and that the terms of the Z Agreement, the Other Z Agreements, and the Cooperation Agreement remain unchanged.

Respectfully submitted,

Dated: October 11, 2023

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*Attorneys for Allegheny County Sanitary
Authority*

VERIFICATION

I, Douglas Jackson, on behalf of the Allegheny County Sanitary Authority, hereby state that the facts set forth in the foregoing document 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 in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Name: Douglas Jackson P.E.
Title: Director of Operation & Maintenance
and Deputy Executive Director
Allegheny County Sanitary Authority

Date: October 11, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition to Intervene 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:

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SALZMANN HUGHES, P.C.

Dated: October 11, 2023

/s/ Scott T. Wyland
Scott T. Wyland