

COMMONWEALTH OF PENNSYLVANIA



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October 16, 2023

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

Re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code to acquire the wastewater collection and conveyance system owned by the Borough of Brentwood and to provide wastewater service to the public in the Borough of Brentwood in Allegheny County, Pennsylvania Docket No. A-2021-3024058

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Andrew J. Zerby  
Andrew J. Zerby  
Assistant Consumer Advocate  
PA Attorney I.D. # 332222  
AZerby@paoca.org

Enclosures:

cc: The Honorable Katrina L. Dunderdale (**email only**)  
Nick Miskanic, ALJ's Legal Assistant (**email only**: [nmiskanic@pa.gov](mailto:nmiskanic@pa.gov))  
Certificate of Service

\*4889-1369-0759

CERTIFICATE OF SERVICE

Application of Pennsylvania-American Water :  
Company under Sections 1102(a) and 1329 of :  
the Pennsylvania Public Utility Code to acquire : Docket No. A-2021-3024058  
the wastewater collection and conveyance system :  
owned by the Borough of Brentwood and to provide:  
wastewater service to the public in the Borough of :  
Brentwood in Allegheny County, Pennsylvania :

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

Dated this 16<sup>th</sup> day of October 2023.

**SERVICE BY E-MAIL ONLY**

Carrie B. Wright, Esquire  
Bureau of Investigation & Enforcement  
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Phone: (717) 783-5048  
Dated: October 16, 2023  
\*4878-1581-8374

**BEFORE  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water	:	
Company pursuant to Sections 1102 and 1329 of	:	
the Public Utility Code for Approval of the	:	A-2021-3024058
Transfer, by Sale, of Substantially All of the	:	
Assets, Properties and Rights Related to the	:	
Wastewater Collection and Conveyance System	:	
Owned by Borough of Brentwood; and the	:	
Rights to Begin to Offer or Furnish Wastewater	:	
Service to the Public in the Borough of Brentwood,	:	
Allegheny County, Pennsylvania	:	

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333 and the Prehearing Order issued by Administrative Law Judge Katrina L. Dunderdale on September 15, 2023, the Office of Consumer Advocate (OCA) provides the following:

**I. INTRODUCTION**

On March 31, 2023, Pennsylvania-American Water Company (PAWC or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the Borough of Brentwood's (Brentwood's) wastewater collection system, the right of PAWC to provide wastewater service in

the areas served by Brentwood, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code.

On April 7, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Public Statement. On May 12, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Protest and Public Statement on May 4, 2023, and a Notice of Appearance on May 9, 2023. Brentwood filed a Petition to Intervene on October 2, 2023. On October 12, 2023, the Allegheny County Sanitary Authority (ALCOSAN) filed a Petition to Intervene.

By Secretarial Letter dated July 20, 2023, the Commission conditionally accepted the Application. On September 14, 2023, the Commission accepted the Application by Secretarial Letter. On September 15, 2023, a prehearing conference order was issued scheduling a telephonic prehearing conference on October 17, 2023, and directing the parties to submit prehearing conference memoranda by 12:00 p.m. on October 16, 2023.

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

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Aron J. Beatty and by Assistant Consumer Advocate Andrew J. Zerby. Two copies of all documents should be served on the OCA as follows:

Aron J. Beatty  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, Forum Place 5th Floor  
Harrisburg, PA 17101-1923  
(717) 783-5048  
[OCAPAWCBrentwood@paoca.org](mailto:OCAPAWCBrentwood@paoca.org)

The OCA respectfully requests that the Presiding Officer permit electronic service without the requirement of a follow-up hard copy. Only to the extent that materials are not available

electronically, the OCA requests that one hard copy be served upon Aron Beatty at the above mailing address.

### **III. DISCOVERY**

In the Prehearing Order issued September 15, 2023, the ALJ directed certain modifications to the Commission's procedural rules regarding discovery. In order to effectively investigate and adequately develop a record in this matter, the OCA requests some additional modifications of the Commission's procedural rules regarding discovery on a going-forward basis, namely that due dates are "in-hand" and electronic service on the due date will satisfy the "in-hand" requirement.

### **IV. WITNESSES**

The OCA intends to present the testimony of Nicholas DeMarco (Rate Impact and Policy Issues) and Barbara Alexander (Consumer Protection and Billing Practices). Mr. DeMarco's contact information is as follows:

Nicholas DeMarco  
Regulatory Analyst  
Office of Consumer Advocate  
555 Walnut Street, Forum Place 5th Floor  
Harrisburg, PA 17101-1923  
(717) 783-5048  
[NDeMarco@paoca.org](mailto:NDeMarco@paoca.org)

Ms. Alexander's contact information is as follows:

Barbara R. Alexander  
Barbara Alexander Consulting, LLC  
44 Beech Street  
Hallowell, ME 04347  
(207) 458-1049  
[barbalexand@gmail.com](mailto:barbalexand@gmail.com)

To the extent necessary, the OCA's witness will provide testimony regarding the impact of the proposed transaction on PAWC's existing customers and the acquired customers, the collection of fees for wastewater treatment, and other issues presented in this proceeding.

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify Your Honor and all parties of record immediately.

## V. ISSUES

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

(1) Provision of Safe, Adequate and Reasonable Service at Just and Reasonable Rates: The asset purchase agreements provide that PAWC will pay \$19,364,443 for Brentwood's wastewater system assets. PAWC seeks to have the purchase price approved for inclusion in rate base under Section 1329, as part of this proceeding.

a. Rate Stabilization: Under the terms of the Asset Purchase Agreement (APA), PAWC will not increase the rates for current Brentwood customers for at least two years after the date of Closing. Application at ¶ 33(d). PAWC's request for Commission approval of this rate freeze constitutes a rate stabilization plan, within the meaning of Section 1329(g) of the Public Utility Code. PAWC has declined to furnish the required "testimony, schedules, and work papers" to "establish the basis for the [rate stabilization] plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan." PAWC Statement 3, 9:1 – 5; *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, p. 27 (Final Order

Oct. 27, 2016)<sup>1</sup>. If the Commission decides to approve this transaction, the OCA supports a condition of approval that requires PAWC and its shareholders to bear all the revenue shortfall between revenues it is permitted to recover under the APA and the costs that it will incur with respect to the Brentwood system at its current rates as a result of this rate freeze provision. These costs should not be imposed on other ratepayers.

b. ALCOSAN Rates: As Brentwood is a collection-only system, its current customers receive a separate line item on their bill for the cost of treatment. However, the rate which Brentwood customers are charged for treatment is determined by the treating authority, ALCOSAN, which is not regulated by the Commission. PAWC Statement No. 3, 7:11 – 22. As a result, Brentwood customers could see an increase in their wastewater rates without prior Commission authorization. The OCA submits that this issue requires significant scrutiny as PAWC does not currently have collection-only systems whereby it passes through wastewater treatment costs as it is proposing to do with ALCOSAN rates. The OCA submits that a more appropriate approach would be for these costs to be treated as a bulk cost to PAWC, as are other contracted-for wastewater treatment costs, so that current Brentwood customers are only charged Commission-approved service rates.

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

(3) Conditions: The OCA is considering what conditions should be imposed upon the proposed transfers, in addition to the two outlined above, to ensure that PAWC’s and Brentwood’s

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<sup>1</sup> <https://www.puc.pa.gov/pdocs/1483362.docx>.

customers are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations.

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

## **VI. PUBLIC INPUT HEARINGS**

The parties to this case have agreed to conduct two telephonic public input hearings. Both public input hearings will be conducted on October 26, 2023, with one held in the afternoon and the other in the evening. The OCA requests that the phone number and pin be placed on the hearing notice and all advertisements regarding the public input hearings.

## **VII. SCHEDULE**

The OCA proposes the following schedule, which it understands to be acceptable to all parties:

Other Parties' Direct Testimony	October 24, 2023
Public Input Hearings	October 26, 2023
Rebuttal Testimony	October 31, 2023
Surrebuttal Testimony	November 6, 2023
Rejoinder Outline	November 7, 2023 (noon)
Evidentiary Hearings	November 8 and 14, 2023
Receipt of Transcript	November 17, 2023
Main Briefs	November 30, 2023
Reply Briefs	December 14, 2023
Recommended Decision	January 19, 2024
Public Meeting	March 14, 2024

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

## VIII. SETTLEMENT

The OCA is willing to engage in settlement discussions with all parties.

Respectfully submitted,

/s/ Andrew Zerby

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DATED: October 16, 2023

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