

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120**

Application of Pennsylvania-American Water Company, pursuant to 66 Pa. C.S. §§ 1102 and 1329 for: (1) approval of the acquisition by 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 (BASA or Authority); (2) approval of the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service 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; and (3) an order approving the acquisition that includes the ratemaking rate base of the Authority wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code.

**Public Meeting held November 9, 2023
3037047-OSA
Docket No. A-2022-3037047**

MOTION OF COMMISSIONER RALPH V. YANORA

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition are the Exceptions of Pennsylvania-American Water Company (PAWC) and the Exceptions of the Butler Area Sewer Authority (BASA), the Township of Butler (Township), and the City of Butler (the City) (collectively, the Butler Parties), each filed on September 21, 2023, in the above-captioned proceeding. The Exceptions were filed in response to the Recommended Decision of Administrative Law Judge (ALJ) Marta Guhl issued on September 14, 2023. Also before the Commission is the Joint Petition for Approval of Unanimous Settlement of All Issues (Settlement) filed by PAWC, the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate, BASA, the Township, and the City (collectively, Joint Petitioners) on August 14, 2023. Finally, before the Commission is PAWC's and the Butler Parties' Joint Motion to Strike the Reply Exceptions filed jointly by the Joint Protestants (Motion to Strike), which was filed on September 27, 2023.¹

¹ The Joint Protestants filed a response to the Motion to Strike on October 16, 2023.

This matter concerns the Application filed with the Commission by PAWC on February 14, 2023, pursuant to Sections 507, 1102, and 1329 of the Public Utility Code (Code), 66 Pa. C.S. §§ 507, 1102, and 1329 (Application). In its Application, PAWC requested Commission approval of the acquisition of substantially all the assets, properties and rights related to the wastewater collection and treatment system (the System) owned by BASA, and the right of the Company to provide wastewater service in the areas served by BASA. The Application also requested, pursuant to Section 1329(c)(2) of the Code, the Commission's approval to utilize fair market value for the ratemaking rate base of the System.

On August 14, 2023, the Joint Petitioners filed the Settlement requesting approval of the Application and disposing of all the issues in this proceeding consistent with the terms and conditions therein. PAWC, the Butler Parties, I&E, the OCA, and the OSBA also filed Statements in Support. No party opposed the Settlement.

In the Recommended Decision issued on September 14, 2023, the ALJ recommended that the Commission deny the Settlement and the Application because PAWC did not meet its burden of establishing that there is an affirmative public benefit resulting from the acquisition of BASA's System under Sections 1102 and 1103 of the Code.

PAWC Exceptions

In its Exception No. 1, PAWC excepts to the Recommended Decision's conclusion that the Settlement of the parties is not in the public interest, contending that the Recommended Decision erroneously deviated from the Commission's policy of promoting settlements. According to PAWC, such a determination sends a chilling message to litigants which will discourage future settlements considerably. PAWC submits that this result is contrary to the public interest in that moving forward, litigants and the Commission will expend significant resources litigating cases due to heightened uncertainty regarding the Commission's policy of promoting settlements.²

PAWC objects to the purported failure of the Recommended Decision to give due consideration to all Settlement provisions in reaching its conclusion. According to PAWC, not only does the Application meet the statutory requirements of Sections 507, 1102(a), and 1329, but the Settlement also contains numerous additional provisions that clearly demonstrate that the transaction satisfies the applicable legal standards, including the requirement that the acquisition be shown to affirmatively promote the service, accommodation, convenience, or safety of the public. The Company references examples of the affirmative public benefits provided in the Settlement and contends that many of these public benefits could not have been realized in the absence of a settlement as the Commission would not have had the authority to order many of them. It is PAWC's position that the ALJ erred by overlooking these affirmative public benefits and by giving too little weight to the benefits and too much weight to the supposed harms.

In its Exception No. 2, PAWC notes that as a public utility, it enjoys a rebuttable presumption of fitness and that its fitness was unchallenged in this proceeding. Nevertheless, the

² PAWC Exc. at 3.

Company avers that it provided extensive evidence demonstrating its fitness. In addition, PAWC argues that while the ALJ finds that no Party presented a substantial challenge to PAWC's fitness, the Recommended Decision does not include a finding on this legal issue. Therefore, PAWC requests that the Commission find that PAWC is legally, technically, and financially fit to own and operate BASA's System.³

In its Exception No. 3, PAWC argues that the Recommended Decision erred in its conclusion that the acquisition does not affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.⁴ Specifically, the Company asserts that the Recommended Decision dismisses the acquisition's environmental benefits by noting that BASA is subject to a 2019 Corrective Action Plan (CAP) from the Pennsylvania Department of Environmental Protection and is making progress in remediating issues and providing safe service. Likewise, PAWC further contends that the Recommended Decision undervalued the significance of the repeated instances of environmental non-compliance in the System by stating that BASA is making progress in remedying issues and claiming that the record demonstrates the adequacy of existing BASA service. According to PAWC, there is a broad range of adequate service and most consumers would want to receive grade "A" service over service that is barely adequate. PAWC submits that the record does not demonstrate any significant detriments from the acquisition to the public-at-large. PAWC concludes that the acquisition's affirmative benefits outweigh the detriments to this stakeholder group and that the Recommended Decision failed to give sufficient weight to these benefits. PAWC Exc. at 17-21.

For relief, PAWC requests that the Commission reverse the Recommended Decision and approve the Application, as modified by the Settlement, without modification.

Butler Parties' Exceptions

The Butler Parties filed Exceptions which generally adopt and incorporate the Exceptions filed by PAWC. Importantly, the Butler Parties state in their Exception No. 3 that BASA cannot fund necessary capital improvements without a "significant increase in rates," BASA has existing debt limiting its ability to continue providing efficient service, and that BASA "simply could not" execute a \$75 million capital improvement project as efficiently as PAWC.⁵ Additionally, the Butler Parties assert in their Exception No. 4 that the Recommended Decision creates a new standard and policy that a municipality or municipal authority cannot sell its assets unless or until dire circumstances or inadequate service warrant the sale.⁶

OCA Reply Exceptions

The OCA objects to four assertions made in the PAWC and Butler Parties Exceptions: (1) PAWC claims that the Settlement provides benefits and outcomes which were contested on the record; (2) PAWC's assertion that the ALJ's reasoning is counter to the legislative intent of

³ *Id.* at 10.

⁴ *Id.* at 10-11.

⁵ Butler Parties' Exc. at 8-12.

⁶ *Id.* at 21.

Section 1329; (3) the Company's opinion that the ALJ's reasoning would only allow for troubled systems to be eligible for acquisition via Section 1329; and (4) PAWC's contention that the ALJ's legal analysis would establish a new, unreasonably high, standard for Section 1329 transactions.⁷ The OCA requests that if the Commission were to grant the Exceptions of PAWC and the Butler Parties, it should reject the assertions of fact and law contested by the OCA.⁸

Disposition

Pursuant to Sections 1102 and 1103 of the Code, I agree with PAWC and the Butler Parties that, based upon the record evidence in this particular instance, the acquisition has substantial affirmative public benefits that outweigh the potential harms resulting from the acquisition. PAWC has provided numerous affirmative public benefits provided in the Settlement, including: (1) in the first base rate case in which BASA's System is included in PAWC's rate base, PAWC will propose to move the BASA System to 1.4 times the current BASA System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the latter of the first anniversary of the closing of the transaction or January 1, 2025, rather than a potential 94.4 percent increase; (2) the ability for existing BASA customers to participate in PAWC's customer assistance program following the acquisition; (3) placing the lower amount of \$228,000,000 into PAWC's rate base as a result of the transaction rather than the amended \$230,000,000 purchase price; (4) an increased eligibility for hardship grants for all PAWC customers; (5) a contribution by PAWC to its hardship grant program of \$700,000 annually for five years, totaling \$3.5 million; (6) provisions that protect customers from paying for the acquisition of easements post-closing; and (7) PAWC's adoption of a formal program for payment arrangements for commercial customers.⁹

In addition to these stated benefits, the Butler Parties included additional benefits as a result of the acquisition. Some of these benefits include: (1) PAWC's commitment to retain all active personnel of BASA with similar compensation and employment benefits; (2) PAWC's commitment to award development project contracts to Butler-county based contractors; (3) PAWC's commitment to maintain an operations center at BASA's current headquarters for at least ten years; (4) the expectation that business will be more encouraged to open in the greater Butler area; and (5) the influx of cash to the Butler Parties from the sale proceeds.¹⁰

Further, there are important environmental benefits identified by PAWC and BASA whereby PAWC will assume BASA's responsibilities under the 2019 CAP to rebuild infrastructure to address environmental compliance issues, as well as PAWC's capital plan to spend \$75.8 million over five years on the 2019 CAP projects and other projects to upgrade and maintain the System.

⁷ OCA Reply Exc. at 2.

⁸ *Id.* at 3-7.

⁹ PAWC Exc. at 5.

¹⁰ Butler Parties Exc. at 19.

I agree with PAWC and the Butler Parties that the Recommend Decision erred in concluding that *the potential rate impacts of the acquisition alone* outweigh all the above-listed benefits. Regarding BASA's existing customers, I agree with PAWC that disapproval of the acquisition would likely necessitate BASA to impose a substantial rate increase to help fund necessary capital projects (totaling almost \$80 million) and BASA would not be subject to Commission regulatory oversight in setting these new rates. However, if the acquisition is approved, there will be no immediate impact on the rates to BASA's customers, as PAWC will adopt BASA's rates in effect at the time of Closing.

Regarding PAWC's existing wastewater customers, I agree with PAWC that the Recommended Decision incorrectly considered the rate impact of the acquisition together with the rate impacts of *other* PAWC acquisitions and not this acquisition alone. Based on the record evidence, this acquisition will not have an immediate rate impact on PAWC's existing wastewater customers, and any future rate impact will be determined by the Commission in future rate cases. The benefits of the acquisition outweigh the detriments for PAWC's existing wastewater customers when considering the uncertainty of the extent of the rate impacts on PAWC's existing customers and the certainty of the benefits.

For these reasons, (1) the Exceptions of PAWC and the Butler Parties should be granted to the extent they argue that the benefits of the acquisition outweigh any potential harms; (2) the Recommended Decision should be modified; (3) the Settlement should be approved without modification; and (4) the Application should be granted, consistent with this Motion.

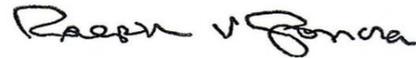
THEREFORE, I MOVE THAT:

1. The Joint Motion of Pennsylvania-American Water Company, the Butler Area Sewer Authority, the City of Butler, and the Township of Butler, to Strike the Exceptions Filed Jointly by the Townships of Summit and Center, filed on September 27, 2023, at Docket No. A-2022-3037047, is granted.
2. The Exceptions of Pennsylvania-American Water Company, and the Exceptions of the Butler Area Sewer Authority, the City of Butler, and the Township of Butler, each filed on September 21, 2023, at Docket No. A-2022-3037047, are granted, consistent with this Motion.
3. The Recommended Decision of Administrative Law Judge Marta Guhl issued on September 14, 2023, at Docket No. A-2022-3037047, is modified, consistent with this Motion.
4. The Joint Petition for Approval of Unanimous Settlement of All Issues filed by Pennsylvania-American Water Company, the Butler Area Sewer Authority, the Township of Butler, the City of Butler, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate, on August 14, 2023, at Docket No. A-2022-3037047, is approved without modification.
5. The Proposed Ordering Paragraphs in Attachment 8 of the Joint Petition for Approval of Unanimous Settlement of All Issues filed by Pennsylvania-American Water Company, the Butler Area Sewer Authority, the Township of Butler, the City of Butler, the

Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate, issued on August 14, 2023, at Docket No. A-2022-3037047 be adopted, consistent with this Motion.

6. The Application filed by Pennsylvania-American Water Company pursuant to Sections 1102, 1103, 1329, and 507 of the Pennsylvania Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Butler Area Sewer Authority, on February 14, 2023, at Docket No. A-2022-3037047, is granted, consistent with this Motion.

7. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.



DATE: November 9, 2023

Ralph V. Yanora, Commissioner