



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 14, 2023

Via Electronic Filing

Secretary Rosemary Chiavetta
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

I&E Objection

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Objection of the Bureau of Investigation and Enforcement in the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov

CBW/ac
Enclosures

cc: Administrative Law Judge Katrina L. Dunderdale (via email)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania American	:	
Water Company under Sections 1102(a)	:	
and 1329 of the Pennsylvania Public	:	
Utility Code to Acquire the Collection	:	
and Conveyance System Owned by the	:	Docket No. A-2021-3024058
Borough of Brentwood and to Provide	:	
Wastewater Service to the Public in the	:	
Borough of Brentwood in Allegheny	:	
County, Pennsylvania	:	

**OBJECTION OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

I. INTRODUCTION

On November 7, 2023, at 5:16 p.m. by electronic mail, Pennsylvania American Water Company (PAWC) provided to the Parties to this proceeding its Stipulation between Pennsylvania American Water Company, Brentwood Borough, and the Allegheny County Sanitary Sewer Authority (ALCOSAN). Evidentiary hearings in this proceeding began the next morning at 9:00 a.m. on November 8, 2023. At that hearing, counsel for PAWC noted that the Stipulation had been provided without the schedules that were supposed to be attached. Administrative Law Judge Katrina L. Dunderdale directed PAWC to provide the Stipulation with the schedules attached as soon as possible as the second day of hearings in this proceeding were scheduled to convene at 9:00 a.m. on November 14, 2023. PAWC, however, failed to provide the Stipulation and attached

appendices in advance of the second day of hearings. Instead, the Stipulation and attached appendices were provided at 9:28 a.m. after hearings had convened for the day. The document provided by PAWC was entitled “Amended Joint Stipulation between Pennsylvania American Water Company, Brentwood Borough, and the Allegheny County Sanitary Sewer Authority.” The Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Bureau of Investigation and Enforcement (I&E) (collectively the Statutory Advocates) all expressed concern regarding the timing of receipt of the document and the short timeframe afforded in a Section 1329 proceeding.

I&E is charged with representation of the public interest. Pursuant to its authority I&E hereby files this Objection to the proposed Stipulation. I&E respectfully requests that the Stipulation not be taken as evidence in this proceeding.

II. DISCUSSION

The interplay of the agreement with ALCOSAN in this proceeding was a large issue for I&E. How that agreement will impact rates and rate base going forward must be closely examined by the Commission. Therefore, the agreement between PAWC, Brentwood, and ALCOSAN and the information contained therein is potentially vital to I&E’s position in this case.

Section 1329 proceedings run on an extremely quick six-month timeframe. For the instant proceeding, the six-month period is quickly wrapping up. With no time left to call witnesses to the stand to answer questions that may arise from this Amended Joint Stipulation, I&E is concerned that the due process rights of I&E, OCA, and OSBA will

be violated. I&E was not a party to any discussions between PAWC, Brentwood and ALCOSAN and is, therefore, left unsure what portion of this agreement was actually negotiated.

The information contained within this Stipulation may have altered testimony entered, discovery sought, cross-examination considerations, and litigation strategy for I&E, had such evidence been properly introduced at the appropriate time. As explained above, PAWC provided the original Stipulation on November 7, 2023, and was asked by ALJ Dunderdale to correct the deficiency PAWC noted in the stipulation it provided. Seven days later, on November 14, 2023, the corrected version of the stipulation was still unavailable to the Statutory Advocates. PAWC is the party with the burden of proof. As such it is incumbent on PAWC to make sure it provides the parties with information in a timely fashion.

Your Honor has authority under 66 Pa. C.S. § 331(d) and 52 Pa. Code §5.403 and § 5.483 to control the receipt of evidence and otherwise regulate the conduct of this proceeding. I&E submits that the late addition of this Amended Stipulation would incurably prejudice the Statutory Advocates. The prejudice to the parties stems from the timing of the provision of these documents. The key components of procedural due process include “notice and opportunity to be heard and to defend **in an orderly proceeding adapted to the nature of the case** before a tribunal having jurisdiction of the cause.”¹ Due process requires that a judicial or administrative tribunal provide a

¹ *Wiley v. Woods*, 393 Pa. 341, 351, 141 A.2d 844, 849–850 (1958); *Carter v. Kubler*, 320 U.S. 243, 64 S.Ct. 1, 88 L.Ed. 26 (1943), as quoted by *Honey Brook Water Co. v. Pennsylvania Pub. Util. Comm'n*, 167 Pa. Cmwlth. 140, 147–48, 647 A.2d 653, 657 (1994). (emphasis added).

hearing where each party in a case has an opportunity to hear the evidence introduced against him, to introduce evidence, and to cross-examine witnesses.² With no ability to be involved in the discussions between the parties the parties, I&E, OCA and OSBA's only recourse would be to ask questions related to the documents of the witnesses on cross-examination. The time for cross-examination has passed and the ability to recall these witnesses is unlikely to occur given the timeframe which requires Main Briefs to be provided by November 30, 2023.

The introduction of this Amended Stipulation at this juncture in this proceeding unnecessarily burdens the Parties and the ALJ in resolving this matter within the prescribed statutory timeframe; particularly if the ALJ or Parties have questions related to the Stipulation which would necessitate the recalling of witnesses for testimony. The introduction of the Amended Stipulation at such a late juncture leaves I&E with an incurable disadvantage, particularly the fact that I&E has no ability to ask cross examination related to this document.

As a result, I&E submits that this Amended Stipulation cannot be admitted into evidence in this proceeding.

WHEREFORE, for the reasons state herein, the Bureau of Investigation and Enforcement respectfully requests that Administrative Law Judge Dunderdale deny Pennsylvania American Water Company's motion to admit the Amended Joint Stipulation between Pennsylvania American Water Company, Brentwood Borough, and

² *Pennsylvania State Athletic Commission v. Bratton*, 177 Pa. Superior Ct. 598, 112 A.2d 422 (1955).

the Allegheny County Sanitary Sewer Authority along with its attached appendices into the evidentiary record in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-6156

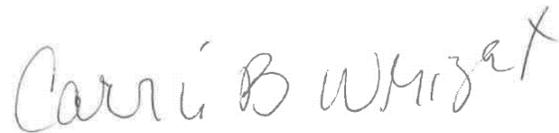
Dated: November 14, 2023

Chester R. Babst, III, Esq.
Robert Max Junker, Esq.
Laura Stone, Esq.
Babst Calland Clements & Zomnir, P.C.
603 Stanwix Street
Two Gateway Center, 6th Floor
Pittsburgh, PA 15222
cbabst@babstcalland.com
rjunker@babstcalland.com
lstone@babstcalland.com
Counsel for ALCOSAN

Sharon E. Webb, Esq.
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101-1923
swebb@pa.gov

Christine Maloni Hoover, Esq.
Aron J. Beatty, Esq.
Andrew J. Zerby, Esq.
Jacob D. Guthrie, Esq.
Office of Consumer Advocate
Forum Place
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
OCAPAWCBrentwood@paoca.org

Brian Kalcic
Excel Consulting
7330 Dorset Avenue
St. Louis, MO 63130
excel.consulting@sbcglobal.com
Witness for OSBA



Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov