



COMMONWEALTH OF PENNSYLVANIA

November 30, 2023

**E-FILED**

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

**Re: Application of Pennsylvania-American Water Company for Acquisition of the Wastewater Assets of the Borough of Brentwood / Docket No. A-2021-3024058**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*/s/ Sharon E. Webb*

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

*Enclosures*

cc: Brian Kalcic  
Parties of Record

**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  
all of the assets, properties and rights  
related to the wastewater collection and  
conveyance system owned by the Borough  
of Brentwood; (2) the rights of  
Pennsylvania-American Water Company  
to begin to offer or furnish wastewater  
service to the public in the Borough of  
Brentwood in Allegheny County,  
Pennsylvania** : : : : : **Docket No. A-2021-3024058**

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**MAIN BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Sharon E. Webb  
Assistant Small Business Advocate  
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**For: NazAarah Sabree  
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**Dated: November 30, 2023**

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**TABLE OF CITATIONS**

*Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).....2

*Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008).....3

*Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12 .....3

*Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) .....3

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## **I. STATEMENT OF THE CASE**

### **A. Procedural History**

On July 1, 2021, Pennsylvania-American Water Company (“PAWC” or the “Company”) filed a Notice of Licensed Engineer and Utility Valuation Expert in the acquisition of the Borough of Brentwood Wastewater system. On April 3, 2023, PAWC filed an Application for approval of the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Borough of Brentwood (“Borough” or “Brentwood”) to PAWC (“*Application*”).

On April 7, 2023, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement.

On May 5, 2023, the Office of Consumer Advocate (“OCA”) filed a Notice of Appearance, Protest and Public Statement.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed its Notice of Appearance on May 12, 2023.

On July 20, 2023, PAWC filed a letter requesting a Secretarial Letter to be issued setting a deadline for protests or petitions to intervene.

On July 20, 2023, a Secretarial Letter was issued in response to PAWC’s letter and October 16, 2023 was set as the deadline for protests or petitions to intervene.

On October 2, 2023, the Borough of Brentwood filed a Petition to Intervene.

On October 11, 2023, the Allegheny County Sanitary Authority (“ALCOSAN”) filed a Petition to Intervene.

On September 15, 2023, a Notice was issued that a telephonic Pre-Hearing Conference was scheduled for October 15, 2023, before Administrative Law Judge (“ALJ”) Katrina Dunderdale.

ALJ Dunderdale issued a Prehearing Conference Order on September 15, 2023 which established a litigation schedule.

On October 24, 2023, the OSBA served the Direct Testimony of OSBA's witness Brian Kalcic.

Two Public Input Hearings were held on October 26, 2023.

Evidentiary hearings were held on November 8<sup>th</sup> and November 14, 2023, at which the testimony of Mr. Kalcic was admitted into the record.

### **B. Overview of the Proposed Transaction**

Pursuant to the Asset Purchase Agreement "(APA)" submitted in support of the proposed acquisition, PAWC will pay the Borough of Brentwood \$19,364,443 for the Borough's wastewater assets. Additionally, PAWC agreed to maintain base rates for Brentwood's customers until after the second anniversary of the Closing Date of the proposed transaction. Brentwood currently has a "collection only" wastewater system with Brentwood customers billed for wastewater treatment by ALCOSAN.<sup>1</sup>

## **II. BURDEN OF PROOF**

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

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<sup>1</sup> PAWC Statement No. 3 at 7.

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

### **III. SUMMARY OF ARGUMENT**

As part of the proposed acquisition of Brentwood’s wastewater system assets, certain rate commitments contained in Section 7.03(a) of the APA inappropriately prohibit PAWC from implementing a base rate increase for Brentwood customers until after the second anniversary of the Closing Date of the proposed transaction.

### **IV. ARGUMENT**

#### **A. Section 1102 and 1103 Issues**

##### **1. Fitness**

The OSBA took no position on this issue.

## **2. Substantial Public Benefits Test**

The OSBA took no position on this issue.

### **B. Section 1329 Issues**

#### **1. Fair Market Value for Ratemaking Purposes**

The OSBA took no position on this issue.

#### **2. Tariff and Rates**

Section 7.03 addresses the current and future sanitary wastewater rates applicable to Brentwood customers pursuant to the terms of the APA. The key provision of Section 7.03, as identified by Mr. Kalcic are as follows:

1) Buyer shall implement the Seller's sanitary wastewater rates then in effect upon the Closing Date of the Proposed Transaction, inclusive of any PaPUC permitted or required surcharges or pass-through costs;

2) Buyer shall implement monthly billing for Brentwood customers at and after Closing;

3) Buyer shall not increase existing base rates for Brentwood customers until after the second anniversary of the Closing Date; and

4) Buyer shall include the rate provisions contained in Section 7.03(a) in its requested PaPUC Governmental Approval.<sup>2</sup>

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<sup>2</sup> OSBA Statement No. 1 at 2.

In response to a discovery request from the OSBA, PAWC confirmed that Brentwood's Request for Proposal ("RFP") required a two-year rate moratorium, which the Company agreed to honor in order to submit a conforming bid.<sup>3</sup>

As Mr. Kalcic testified, Brentwood's wastewater rates are much lower than those of PAWC's Rate Zone 1 (*i.e.*, Main Division) by approximately 30.7%.<sup>4</sup> Depending on the timing of the resolution of PAWC's next base rates case, there is the possibility that Brentwood customers base rates would be held constant beyond the effective dates of new rates established in the base rates case.

In the OSBA's view, all of PAWC's wastewater base rates should be evaluated in each of the Company's base rate proceedings. Further, all rate areas should exhibit movement toward the system average wastewater rate (*i.e.*, toward cost of service) in each rate case, consistent with the Commission's long-standing policy of implementing single tariff pricing.<sup>5</sup>

In order to preclude the possibility that Brentwood customers might inappropriately benefit from a rate freeze that extends beyond the effective date of the new rates to be established in PAWC's next base rates case, Mr. Kalcic recommended that Commission reject the rate commitment contained in Section 7.03(a) of the APA as a condition for approval of the Proposed Transaction. Alternatively, Mr. Kalcic recommended that the Commission direct PAWC to impute revenues to its Brentwood service area, as necessary, to make up for any revenue shortfall associated with rate increase that would otherwise be applicable to Brentwood customers in PAWC's first base rate case following the closing date as a condition of approval of

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<sup>3</sup> *Id.*

<sup>4</sup> OSBA Statement No. 1 at 3.

<sup>5</sup> *Id.*

the Proposed Transaction. With this condition, PAWC’s shareholders, rather than the general ratepayers, will bear the cost associated with PAWC’s commitment to freeze the rates of Brentwood’s customers.<sup>6</sup>

In its Rebuttal, in response to the OSBA’s recommendations and similar concerns raised by OCA witness Alexander, PAWC accepted the alternative recommendation made by the OSBA and provided as follows:

“If PAWC filed a base rate case that will be effective prior to the[] second anniversary of Closing, PAWC will propose an increase for Brentwood customers that will become effective on the second anniversary of Closing and will calculate its proof of revenues as if the increase to Brentwood revenues were not delayed.”<sup>7</sup>

Accordingly, if the Commission approves the Proposed Acquisition of the Borough’s wastewater assets by PAWC, the approval should be conditioned on PAWC’s requirement to impute the revenues to its Brentwood service area to make up for any revenue shortfall associated with the rate increase that would otherwise be attributable to Brentwood customers in the Company’s first Base rate case following the Closing Date of the acquisition.

### **3. DSIC**

The OSBA took no position on this issue.

### **4. Claims for AFUDC and Deferred Depreciation**

The OSBA took no position on this issue.

### **5. Transaction and Closing Costs**

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<sup>6</sup> OSBA Statement No. 1 at 7.

<sup>7</sup> PAWC Statement No. 3-R at 4

The OSBA took no position on this issue.

**6. Additional Issues**

**a. Plant in Service Used to Serve “Non-Customers”**

The OSBA took no position on this issue.

**b. Is the Rate Freeze a Rate Stabilization Plan?**

The OSBA’s position on this issue is discussed in Paragraph IV B(2) above.

**c. Should Future Customer Notices Show a Range of Impacts?**

The OSBA took no position on this issue.

**C. Section 507 Issues**

The OSBA took no position on this issue.

**D. Preservation of the Z Agreement and other Z Agreements**

The OSBA took no position on this issue.

**E. Recommended Conditions for Approval**

**1. Missing Easements and Other Property Rights**

The OSBA took no position on this issue.

**2. Cost of Service Studies**

The OSBA took no position on this issue.

**3. Rate Freeze**

The OSBA’s position on the impact on rates is discussed in the context of Section IV B(2) above.

**4. Customer Notices**

The OSBA took no position on this issue.

**5. ALCOSAN Charges and Discounts**

The OSBA took no position on this issue.

**6. Specific Notice for Brentwood customers prior to closing**

The OSBA took no position on this issue.

**7. Payment Agent in Brentwood**

The OSBA took no position on this issue.

**V. CONCLUSION AND REQUEST FOR RELIEF**

Wherefore, the OSBA respectfully requests that if the ALJ and the Commission approves the Proposed Acquisition of the Borough’s wastewater assets by PAWC, the approval be conditioned on PAWC’s requirement to impute the revenues to its Brentwood service area to make up for any revenue shortfall associated with the rate increase that would otherwise be attributable to Brentwood customers in the Company’s first Base rate case following the Closing Date of the acquisition.

Respectfully Submitted,

*/s/ Sharon E. Webb*

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Dated: November 30, 2023

# APPENDIX A

## **List of Sponsored Testimony and Exhibits**

# **List of Sponsored Testimony and Exhibits**

- DIRECT TESTIMONY: OSBA Direct Testimony and Exhibit of Brian Kalcic, labeled as OSBA Statement No. 1, including 7 pages of Testimony, Exhibit BK-1, an Appendix and Mr. Kalcic's signed Verification dated October 23, 2023.

# APPENDIX B

## **Proposed Findings of Fact**

# **Proposed Findings of Fact**

1. As part of the proposed acquisition of Brentwood's wastewater system assets, certain rate commitments contained in Section 7.03(a) of the APA prohibit PAWC from implementing a base rate increase for Brentwood customers until after the second anniversary of the Closing Date of the proposed transaction. OSBA Statement No. 1 at 2.
2. OSBA witness Mr. Kalcic recommends that the Commission two options to address inappropriate rate commitments contained in Section 7.03(a) of the APA.
3. Mr. Kalcic initially recommends that the Commission reject the rate commitment contained in Section 7.03(a) of the APA as a condition for approval of the acquisition. OSBA Statement No. 1 at 5
4. Alternatively, Mr. Kalcic recommends that the Commission require PAWC to impute revenues to the Brentwood Service area, as necessary, to make up for any revenue shortfall associated with the rate increase that would otherwise be applicable to Brentwood customers in PAWC's first base rate case following the closing date as a condition for approval of the acquisition. OSBA Statement No. 1 at 5.
5. PAWC accepted Mr. Kalcic's alternative recommendation to impute the revenues to its Brentwood service area to make up for any revenue shortfall associated with the rate increase that would otherwise be attributable to Brentwood customers. PAWC Statement No 3-R at 4.

# APPENDIX C

## **Proposed Conclusions of Law**

# Proposed Conclusions of Law

1. Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
2. Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.
3. The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

# APPENDIX D

## **Proposed Ordering Paragraphs**

## **Proposed Ordering Paragraphs**

In order to cure the inappropriate rate commitments contained in Section 7.03(a) of the APA, and in the event that PAWC files a base rate case that will be effective prior to the second anniversary of the Closing of this transaction, PAWC will propose an increase for Brentwood customers that will become effective on the second anniversary of Closing and will calculate its proof of revenues as if the increase to Brentwood revenues were not delayed.



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