



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 30, 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 Main Brief

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief of the Bureau of Investigation and Enforcement ("I&E") 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.

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CBW/ac
Enclosures

cc: Administrative Law Judge Katrina L. Dunderdale (via Electronic and First-Class Mail)
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 :

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Carrie B. Wright
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Dated: November 30, 2023

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I. PROCEDURAL HISTORY

A. Introduction

On March 31, 2023, Pennsylvania American Water Company (PAWC or Company) filed the instant Application seeking approval under Sections 507, 1102, and 1329 of the Public Utility Code of the acquisition of the Borough of Brentwood's (Brentwood or Borough) wastewater collection system and approval for the ratemaking rate base of the Brentwood assets. By Secretarial Letter dated July 23, 2023, the Pennsylvania Public Utility Commission (PUC or Commission) conditionally accepted the Application. On September 14, 2023, the Commission, by Secretarial Letter, accepted the Application as complete.

PAWC's utility valuation expert (UVE) appraised the Brentwood assets at \$22,721,549 and Brentwood's UVE appraised the Brentwood assets at \$20,934,000.¹ The negotiated purchase price for the Brentwood System was \$19,364,443,² which is the proposed ratemaking rate base as it is the lower than the average of the two appraisals ($((\$22,721,549 + \$20,934,000) / 2) = \$21,827,775$)).

B. History of the Proceeding

As noted above, on July 23, 2023, the Commission conditionally accepted the Application, and on September 14, 2023, the Commission accepted the Application as complete.

¹ Appendix A-5.1.

² PAWC St. No. 3, p. 6.

A Notice of Appearance was filed on April 7, 2023, by the Office of Small Business Advocate (OSBA). The Office of Consumer Advocate (OCA) filed its Notice of Appearance on May 9, 2023. And I&E filed its Notice of Appearance on May 12, 2023. The Borough of Brentwood filed a Petition to Intervene on October 2, 2023, and the Allegheny County Sewer Authority (ALCOSAN) filed a Petition to Intervene on October 12, 2023.

A Prehearing Conference was held on October 17, 2023, with Administrative Law Judge Katrina L. Dunderdale (the ALJ) presiding. A litigation schedule was developed that provided for the filing of testimony, hearings and briefs as follows:

Direct testimony of other parties	October 24, 2023
Rebuttal testimony	October 31, 2023
Surrebuttal testimony	November 6, 2023
Evidentiary hearing (with oral rejoinder)	November 8 and 14, 2023
Main Briefs	November 30, 2023
Reply Briefs	December 14, 2023

ALJ Dunderdale conducted evidentiary hearings on November 8, 2023, and November 14, 2023. At the hearing, testimony and exhibits were entered into the record and cross examination was conducted. I&E's direct testimony and accompanying exhibits, identified as I&E Statements Nos 1 and I&E Statement No. 2, and I&E's surrebuttal testimony identified as I&E Statement No. 1-SR were entered into the evidentiary record. Pursuant to the procedural schedule and in accordance with Commission regulations at Section § 5.501, I&E submits this Main Brief.

II. BURDEN OF PROOF

The Public Utility Code mandates that the party seeking affirmative relief from the

Commission bears the burden of proof.³ To satisfy that burden, there is a duty to demonstrate by a preponderance of the evidence that the proposed transaction complies with Pennsylvania law.⁴ Therefore, as the party requesting relief, the Applicant has the burden of proving that the proposed transaction satisfies Sections 1102, 1103, and 1329 of the Code. In a case such as this one, pending before an administrative tribunal, Courts have held that a “litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁵ In order to meet its burden of proof, PAWC must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”⁶ PAWC bears the burden of proving that the acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”⁷

PAWC has failed to demonstrate that its Application meets the criteria that it serves the public interest within the meaning of Sections 1102 and 1103 of the Code. PAWC, additionally, has failed to demonstrate how a rate base determination can be made when not all the plant it seeks to acquire is used and useful in public service to utility customers.

III. SUMMARY OF THE ARGUMENT

PAWC is seeking to acquire the Brentwood wastewater system, which is a sanitary sewer collection system, serving approximately 83,974 public, commercial, and

³ 66 Pa. C.S. § 332(a).

⁴ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁵ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁶ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁷ *City of York v. Pa. PUC*, 295 A.2d 825, 28 (Pa. Cmwlth. 1972).

residential customers, that conveys all sewage to the Allegheny County Sanitary Authority (ALCOSAN). The system is located within the Borough of Brentwood in Allegheny County, Pennsylvania. PAWC is seeking to acquire the system for the negotiated purchase price of \$19,364,443, which is the amount it requests to incorporate as the ratemaking rate base of the system into the overall PAWC rate base.

The Application, as filed, is not in the public interest. The Company has not alleged any substantial, affirmative public benefits that will be produced by the acquisition as required by *City of York*.⁸ Further, the interconnection of this system with ALCOSAN makes the acquisition troubling as it would require PAWC and Brentwood customers to pay for a return of and on rate base that is not used and useful in their service.

Because the information contained within this filing is insufficient to establish that the acquisition is in the public interest and will result in affirmative benefits to PAWC's existing customers or to newly acquired Brentwood customers, I&E recommends that the Application be rejected.

In the alternative, should the Commission approve PAWC's Application, I&E respectfully requests that that the Commission require PAWC to provide a separate cost of service study (COSS) for the Brentwood system in its next base rate filing which also separates out the value of the plant being used to serve non-customers because the ALCOSAN interconnection will cause PAWC customers to pay a return of and on rate

⁸ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

base that is not used and useful as required by the public utility code and must be separated out to cure this deficiency.

IV. ARGUMENT

A. Section 1102 and 1103 Issues

The Code requires that the Commission issue a certificate of public convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.⁹

The standards for the issuance of a certification of public convenience are set forth in Sections 1102 and 1103 of the Code.¹⁰ A certificate of public convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”¹¹ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.¹² To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹³

⁹ 66 Pa. C.S. § 1102(a).

¹⁰ 66 Pa. C.S. §§ 1102, 1103.

¹¹ 66 Pa. C.S. § 1103(a).

¹² *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

¹³ 66 Pa. C.S. § 1103(a).

Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire. In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”¹⁴ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹⁵

1. Fitness

I&E did not challenge PAWC’s legal or technical fitness to own or operate any of the assets Brentwood has agreed to convey. I&E’s challenges to PAWC’s ownership related to the lack of affirmative public benefits that would make the transaction worthwhile for both existing PAWC customers and the newly acquired Brentwood customers.

2. Substantial Affirmative Benefits Test

As noted above, in an acquisition proceeding, a certificate of public convenience will be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”¹⁶ Further, in the *City of York v. Pennsylvania Public Utility Commission*, it was established that in order to show that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or

¹⁴ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

¹⁵ 66 Pa. C.S. § 1103(a).

¹⁶ 66 Pa. C.S. § 1103(a).

safety of the public in some substantial way.¹⁷ The Applicant in this proceeding has made unquantified and generalized assertions that current customers will benefit from the economies of scale, but I&E submits that this is simply insufficient to show any affirmative public benefits.

In order to determine if there is a substantial public benefit, the Commission must weigh the factors in favor of and against the acquisition, which includes the impact on rates, before making its decision.¹⁸ Importantly, the Commonwealth Court noted recently in the *Cicero* decision, "...services and upgrades that are the result of the acquiring utility's size and fitness are substantial affirmative public benefits is not consistent with *City of York* and its progeny. This is particularly true when the existing system is already operating safely and reliably."¹⁹ In addition, where "...there are **no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the CPC under Section 1103(a)."²⁰

I&E does not dispute that PAWC has the expertise to provide wastewater service to Brentwood; however, this alone does not demonstrate that approval of the application

¹⁷ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

¹⁸ *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3024267, p. 8 (Order entered January 13, 2022) (quoting *McCloskey v. Pennsylvania Public Utility Commission*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019)).

¹⁹ *Cicero v. Pa. Pub. Util. Comm'n*, 910 CD 2022 (July 23, 2023).

²⁰ *Id.* at 20.

will result in substantial public benefits. This is especially true in light of the fact that Brentwood is currently providing adequate service and can continue to do so potentially at a lower cost than PAWC can.

First, with regard to service, Brentwood’s largest issue appears to be infiltration and inflow (I&I) which has been an issue for some time with the system. However, it appears Brentwood is currently taking the necessary steps to correct this issue. As explained in OCA witness DeMarco’s testimony:

In 2016 Brentwood entered a two phase Consent Order and Agreements (COA) with ACHD and PADEP. Phase I which required the completion of a Source Reduction Study by Brentwood to see how it most effectively do its part to reduce sanitary sewer overflows and to reduce flows downstream from Brentwood’s sanitary sewer system and/or at its connection with the ALCOSAN interceptor system. Phase I June 1, 2018 (PAWC Statement 2 A-14-a p. 12-14).

Under Phase II which began October 6, 2023, Brentwood is to implement source Flow Reduction projects and source reduction studies on the two identified lines. By December 31, 2026 Brentwood should complete its projects to eliminate sanitary sewer over flows (SSO) or enact a Ten Percent Project and submit all studies deemed necessary to PADEP and ALCOSAN (PAWC Statement 2 A-14-a p. 14-16).²¹

As OCA witness DeMarco explains, Brentwood appears to be improving its system and meeting the milestones in the agreements it has entered into.²² In addition, it is also unclear where the excess I&I comes from. As PAWC witness Hufton stated at hearing, “each of the municipalities in the ALCOSAN regional system...are under Consent

²¹ OCA St. No. 1, p. 9.

²² OCA St. No. 1, p. 10.

Orders similar to Brentwood to produce I and I. So it is reasonable to expect that the upstream municipalities have their own I and I challenges.”²³

With the agreement that the excess I&I is likely due in part to the upstream municipalities, and with the understanding that Brentwood has been meeting the required milestones to lessen or fix the I&I problem, it seems likely that, at most, PAWC would simply maintain the status quo related to the I&I issues this system experiences. Maintaining the status quo is not an affirmative public benefit. PAWC has provided no evidence to show that it would do anything more than what Brentwood is currently doing, and Brentwood has provided no evidence to demonstrate that it cannot continue to work towards the measures it has already been working towards to control I&I.

No doubt, Brentwood’s service is not perfect. However, perfection is not required for service to be adequate. When discussing whether Brentwood was a troubled system OCA witness DeMarco explains:

Borough Manager Zboyovsky does not claim that the Brentwood system is a troubled system (PAWC Statement 1 A-13-a). Brentwood has not violated its portion of the ALCOSAN consent decree. Manager Zboyovsky states that “Financially, the Borough is not in distress.” (A-13 a p. 5 lines 2-3). Bill No. 1308, introduced November 21, 2022 and adopted by the Borough Council and signed by the Mayor on December 12, 2022 notes that Brentwood has had no issue running and maintaining its system (Appendix-A-18-a p.1). In the last five years the Borough has not had issues funding any infrastructure replacement or updates (OCA-II-3). Mr. Kapenstien in his presentation to the Borough states that the Brentwood system has “good cashflow” (OCA-II-19 Exhibit I p 18). Therefore, I do not believe that the Brentwood system is a troubled system. According to Appendix – C, the Borough’s

²³ Tr. at 148.

submitted balance sheet shows \$3.058 million of cash on hand.²⁴

In fact, apart from the issues with I&I which Brentwood is working to resolve, Brentwood could only point to an incident in November 2022 when there were sewer backups that occurred that it could not address for “a number of weeks.”²⁵ However, Brentwood has provided no specific evidence that it suffers from a systemic inability to handle incidents or emergencies for its customers. As I&E witness Kubas stated on cross-examination, Brentwood likely could have done a better job handling the November 2022 incident, but no utility is going to do a perfect job.²⁶

Second, as I&E witness Kubas explained, under PAWC’s ownership it is likely that Brentwood customers will face large rate increases. Further, to the extent that those rates are not substantially increased, existing PAWC customers face the burden of subsidizing the Brentwood customers. All the alleged benefits result not from the acquisition itself, but from the size and technical fitness of PAWC. Furthermore, it does not appear that Brentwood is operating its system in such a way as to need the leadership of a larger utility to maintain safe and reliable service. Something more than a willing buyer and willing seller are required for the Commission to determine that an acquisition meets the affirmative public benefits test. Here, PAWC has simply not demonstrated that anything more than the status quo will result from this transaction.

²⁴ OCA St. No. 1, pp. 14-15.

²⁵ Tr. at 343.

²⁶ Tr. at 344.

Another alleged benefit of the transaction is that PAWC also provides water service to Brentwood customers; therefore, if the acquisition is approved, there will be one entity providing both water and wastewater services to these customers. I&E witness Kubas testified that having one entity provide both water and wastewater service does not implicitly yield a public benefit, especially when considered in conjunction with the potential for higher rates under PAWC's ownership.²⁷ Furthermore, benefits such as access to PAWC's 24/7/365 customer service is at best a minor benefit. Issues that arise during normal business hours can be directed to the Brentwood itself, while problems that arise outside of normal business hours can be directed to emergency services such as the police or 911 if warranted. From the public input testimony it does not appear that Brentwood customers had concerns about after hours customer service and Brentwood can address emergencies without PAWC's oversight. In fact, not all Commission regulated utilities have 24/7/365 access to customer service. Therefore, 24/7/365 customer service is not a requirement for having adequate utility service.

With no concrete evidence that Brentwood cannot and is not operating its system in a safe and reliable manner, and no evidence presented that it cannot continue to operate it a potentially a lower cost than PAWC, we are left only with the vague assertions of regionalization and consolidation as the alleged affirmative public benefits of this transaction along with a larger customer base over which to spread costs. These vague "benefits" are those that would be present in any acquisition and simply do not rise to the

²⁷ I&E St. No. 1, pp. 7-8.

level of an affirmative public benefit. Furthermore, the rates for the large customer base over which these costs are spread continue to rise as a result of these transactions.

Therefore, it appears there is little to no benefit arising to existing PAWC customers.

Therefore, I&E maintains that the Application, as filed, does not meet the affirmative public benefits test and must be rejected.

B. Section 1329 Issues

Section 1329 of the Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts (UVE). Notably, a Commission Order approving a transaction under Section 1329 is permitted to include "[a]dditional conditions of approval."²⁸

1. Fair Market Value for Ratemaking Purposes

As explained above, the rate base of the municipal system being acquired is to be incorporated into the rate base of the purchasing utility at the lesser of the purchase price,

²⁸ 66 Pa. C.S. § 1329(d)(3)(ii); Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township ("Aqua/New Garden Section 1329 Case"), Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

or the fair market value as established under Section 1329. In this proceeding, a portion of the Brentwood plant is used to serve what have been termed “non-customers” as explained in further detail below. The purchase price of this Acquisition, include the value of the plant being used to serve these non-customers. Regarding the Fair Market Value, in testimony I&E witness Kubas recommended “...the plant, or portion of the plant used to serve ‘non-customers’ should be removed from the requested rate base of \$19,643,443.”²⁹ Witness Kubas goes on to explain that PAWC failed to provide any analysis that would indicate the amount of plant that is being used by non-customer so he was unable to quantify exactly the amount that should be removed.³⁰ Because it is impossible to determine the Brentwood rate base that should be incorporated into PAWC’s rate base, I&E does not believe this acquisition should be approved. However, if the Commission determines that approval is warranted, PAWC must be required to undertake a study that separates this plant used to serve non-customers from the rest of the plant in service so that an accurate rate base can be established. While I&E still does not believe that the record evidence supports approval of this Acquisition, if the Commission determines that approval is warranted, it is inappropriate to require customers to pay for a return of and a return on rate base that is not used and useful to serve non-customers.

²⁹ I&E St. No. 1, p. 13.

³⁰ I&E St. No. 1, pp. 13-14.

2. Tariff and Rates

I&E took no specific position regarding the tariff and rates, other than recommending the rate freeze be denied as not being in the public interest and noting that the notice provided to Brentwood customers was likely inaccurate as to what the full extent of how much rates will need to increase for Brentwood customers. These issues are discussed in full below.

3. DSIC

I&E took no specific position on the DSIC in this proceeding.

4. Claims for AFUDC and Deferred Depreciation

I&E took no specific position on claims for AFUDC of deferred depreciation in this proceeding.

5. Transaction and Closing Costs

Per Section 3.01(d) of the Asset Purchase Agreement, PAWC has agreed to the following:

In addition to the Purchase Price, Buyer shall pay Seller up to Seventy Thousand Dollars (\$70,000) as reimbursement for engineering and legal fees incurred related to this transaction to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days before the Closing Date. Seller shall provide Buyer with invoices evidencing the amount of transaction-related fees incurred at least five (5) Business Days before the Closing Date.

I&E noted in testimony that Section 1329 permits only the acquiring public utility's transaction and closing costs to be included in rate base and recovered from ratepayers.³¹

³¹ I&E St. No. 1, p. 21.

Thus, I&E recommended that the Commission order explicitly exclude these costs from the ratemaking rate base and not otherwise be passed along to ratepayers.

In Rebuttal Testimony, PAWC acknowledged that it was obligated to pay these fees per the APA, but that it would separate out the costs related to Brentwood in its next base rate case. It appears that PAWC's intention is to follow the mandate of Section 1329, therefore, I&E simply requests that this be memorialized in the ALJ's Recommended Decision and the Commission's final Order in this proceeding so that there is no confusion regarding the fact that ratepayers are not to be responsible for these particular transaction and closing costs.

6. Additional Issues

a. Plant Used to Serve "Non-Customers"

The Brentwood system is a conveyance only system. This simply means that treatment of the wastewater occurs elsewhere. Brentwood discharges its wastewater and the wastewater flow of customers who are not Brentwood customers, the "non-customers," into the Baldwin Borough, Whitehall Borough and City of Pittsburgh systems, all of which is eventually combined and treated at the ALCOSAN treatment plant.³² Brentwood does not charge upstream municipalities for flows into the Brentwood system and the downstream municipalities do not charge Brentwood for Brentwood's flows into those downstream systems, but there are cost sharing agreements related to capital improvements.

³² PAWC St. No. 2, p. 6.

While I&E understands the need for this interconnection as Brentwood is a conveyance system and not a treatment system, it does pose an issue for a Commission regulated utility. Commission regulated utilities can only earn a return on plant that is used and useful in the provision of service to its customers.

In a West Penn Power decision, related to the closing of a generating unit, the Commission determined:

The unit is not now entirely used and useful for current ratepayers. Under these circumstances ratepayers should not be required to pay West Penn a full return on this property. We believe that an appropriate treatment would be to allow a return of the investment in the plant by leaving it in the original cost of the rate base.³³

In the same manner, if the Brentwood acquisition were to be approved, the Brentwood system would not be entirely used and useful in the provision of service to jurisdictional ratepayers.

b. The Rate Freeze is a Rate Stabilization Plan

As explained in detail below, while I&E did not make any specific allegations regarding whether the rate freeze agreed to in this Acquisition was a rate stabilization plan, I&E believes the rate freeze is inherently misleading to customers. Because the Commission ultimately retains its rate setting authority no matter what terms PAWC agrees to in the APA, I&E does not believe the rate freeze should be approved because it provides Brentwood customers with a false sense of security that their rates will not be

³³ *Pennsylvania Pub. Util. Comm'n v. West Penn Power Co.*, 1981 WL 178828, at *2 (Dec. 12, 1981).

increased for a period of time when, in fact, PAWC cannot promise that a rate increase will not occur for these customers.

c. Future Customer Notices Should Show the Range of Impacts.

As explained above and in detail below, provisions like the rate freeze agreed to as part of this Acquisition are inherently misleading, and I&E believes the Commission must affirm that it is not in the public interest to mislead customers in order to make Section 1329 acquisitions more appealing. In addition, customer notices often contain artificially low percentage increases that often end up being much lower than the increase necessary for these customers to e pay their cost to serve.

In this proceeding, PAWC noticed the Brentwood customers of a possible 11% increase; however, this estimate assumed that all of the revenue deficiency would be allocated to water customers under Act 11.³⁴ Prior to the Act 11 subsidy, the estimated increase to the Brentwood customers would be approximately 16.5%, which is calculated by dividing the estimated Brentwood Year-1 increase by the current revenues received from the Brentwood system ($\$664,000/\$4,031,000=16.5\%$).³⁵ However, an important consideration is the fact that this increase is solely based on the purchase price and not inclusive of any post-acquisition plant additions that may occur. In addition, PAWC is acquiring other water and wastewater systems under Section 1329 at a rapid pace; most,

³⁴ PAWC St. No. 3-Revised, p. 11.

³⁵ I&E St. No. 1, p. 25.

if not all, of those systems are operating at a revenue shortfall which other customers, including Brentwood customers, would be expected to subsidize.

As I&E witness Kubas explained, PAWC has a history of under-projecting the increases necessary for systems acquired under Section 1329.³⁶ For example, in the Royersford Acquisition, at Docket A-2020-3019634,³⁷ PAWC projected an increase of \$1,102,000; however, in the first base rate case, PAWC showed an actual increase of \$2,061,092. Similarly, in the Upper Pottsgrove Application, at Docket A-2020-3021460, PAWC projected an increase of \$1,002,000. In the first base rate case, PAWC showed an actual increase of \$1,471,196. Finally, in the York Wastewater Application, at Docket A-2021-3024681, PAWC projected an increase of \$17,557,000. In the first base rate case even before the York system was acquired, the actual increase was \$23,248,247.³⁸ Based upon these comparisons, it can be seen that the projected revenue increase in each case was less than the increase in the first base rate case for the respective systems. Therefore, the notices provided to these customers understated the size of the rate increase that would be necessary for these acquired customers.

I&E agrees it is not possible to predict Brentwood's rate increase with exact certainty; however, the above information shows just how inaccurate PAWC's predictions have been in the past. The Commonwealth Court in its *New Garden* decision noted that these cases involve a substantial property right because they impact a rate

³⁶ I&E St. No. 1, p. 28.

³⁷ Note that in the Royersford Application, PAWC reflected the incorrect docket number of A-2020-3014248 on the schedules, which are reflected on I&E Ex. 1, Sch. 4, pp. 1-2.

³⁸ I&E St. No. 1, p. 29.

increase.³⁹ The information contained in these customer notices is information upon which customers of the systems being acquired rely and the information contained therein should be as accurate as possible.

It is not in the public interest to mislead customers about the real impact that an acquisition will have on their rates. It is further not in the public interest to mislead ratepayers into believing that PAWC has the ability to freeze rates for a certain period of time when PAWC clearly knows that the Commission ultimately holds the ratemaking authority to increase these rates. It is imperative that customers are given accurate information about their rates under PAWC's ownership so when the false promises of a rate freeze are not realized, customers are not blindsided by rates much higher than they were able to anticipate given the information they were provided. For these reasons, I&E continues to believe that a rate freeze is not in the public interest and should not be approved by the Commission and further recommends that the customers notices provided in these acquisitions include a more accurate range of potential rate increases.

C. Section 507 Approvals

I&E did not address Section 507 approvals.

D. Preservation of the Z Agreement and other Z Agreements

I&E made no specific arguments about preservation of the Z agreement and other Z agreements. I&E's arguments related to this issue were specific to the issues of plant in service used to serve non-customers and the issues arising therefrom.

³⁹ *McCloskey v. Pennsylvania Pub. Util. Comm'n*, 195 A.3d 1055, 1068 (Pa. Commw. 2018).

E. Recommended Conditions for Approval

While I&E recommends denial of the Acquisition, should the Commission grant approval, I&E recommends the conditions detailed below.

1. Missing Easements and Other Property Rights

While I&E recommends that the Commission deny this Application, if the Commission approves this transaction, I&E recommends that the closing of the transaction not be permitted to occur unless and until Brentwood provides proof to PAWC's satisfaction that it has (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so that PAWC's ratepayers are not burdened with those costs and associated expenses.⁴⁰

Further, I&E recommends that the Commission condition the approval of PAWC's Application that for circumstances beyond Brentwood's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, PAWC and Brentwood may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the

⁴⁰ I&E St. No. 2, pp. 6-7.

easements and other real property rights.⁴¹ In addition, PAWC has agreed to establish an Easement Escrow Fund which will be funded at \$2,000 for each missing easement at the time of closing.⁴²

In Rebuttal Testimony, PAWC witness Salvo explained that PAWC does not object to I&E's recommendation and the recommendation is similar to several settlements that PAWC has entered into.⁴³

The Commission recently acknowledged I&E's concern about missing easements and other property rights in Pennsylvania American Water Company's Section 1329 Application for the acquisition of Upper Pottsgrove Township's wastewater system assets.⁴⁴ There, the Commission directed PAWC and the Township to continue working to achieve the transfer of real property rights and permitted PAWC, at its discretion, to close the transaction without the transfer of all real property rights, provided that an escrow account was established from the purchase price to be used to obtain any post-closing transfers of the real property rights.

As PAWC and I&E appear to be in agreement in the event of one or more missing easements, I&E submits that any approval this Application, should be conditioned on the closing not occurring unless and until all missing easements or property rights are identified; all necessary actions have been take to obtain the missing easements to convey

⁴¹ I&E St. No. 2, p. 7.

⁴² PAWC St. No. 1, p. 13.

⁴³ PAWC St. No. 1-R, p. 4.

⁴⁴ Application of Pennsylvania American Water Co. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Upper Pottsgrove Township, Docket No. A-2020-3021460, p. 3 (Order entered September 15, 2021).

them to PAWC; and, for circumstances beyond Brentwood's control where it is unable to transfer all missing easements (including public rights-of-way and other property rights) before or at the closing of the transaction, PAWC and Brentwood may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.

2. Cost of Service Studies

The primary goal of a COSS is to determine a utility's revenue requirement to serve its different customer classes. A COSS determines the cost to operate the different systems, calculates the cost of the utility's services, separates the costs between the different customer classes, attributes the costs to the different classes, determines how the costs will be recovered from the different customer classes, and establishes the existence and extent of any inter or intra-class subsidizations.

As explained above, there is plant in the Brentwood system that is being used to serve non-customers. Neither PAWC nor Brentwood has undertaken a study to determine the value of the plant that serves non-customers. Jurisdictional customers should not be required to pay for a return of and a return on plant that serves non-customers as this would be contrary to the public interest. PAWC claims that a cost of service study of this nature would be costly and complex. I&E submits, however, that this is not a sufficient ground on which PAWC should be able to avoid this exercise if it wished to acquire this system. As explained by I&E witness Kubas, electric utilities

routinely provide cost of service studies that remove non-jurisdictional plant and leave only jurisdictional plant and expense for Commission review, which demonstrates that other regulated entities have undertaken this type of cost of service study.⁴⁵ In fact, certain water utilities, such as City of Lancaster, that have customers both inside and outside of their City boundaries, routinely allocate costs to jurisdictional versus non-jurisdictional customers in a cost of service study. Therefore, I&E does not believe that it would be a hardship on PAWC to provide a cost of service study which separates out plant to serve customers and non-customers.

I&E witness Kubas further explained that, beyond the difficulties that arise from the service to non-customers, a cost of service study is also beneficial in the following ways: (1) determining the cost to operate the Brentwood wastewater system separately; (2) calculating the costs of the PAWC's different services; (3) separating the costs between PAWC's different customer classes and service areas; (4) attributing costs to PAWC's different customer classes and service areas (5) determining how costs will be recovered from the PAWC's customer classes and service areas; and (6) establishing the existence and extent of subsidization (inter and intra-class) and assist in determining the appropriate amount of revenue requirement, if any, to be shifted from wastewater customers to water customers.⁴⁶

Accordingly, if the Commission approves this acquisition, it is imperative that PAWC provide a cost of service study related to the Brentwood system in any subsequent

⁴⁵ I&E St. No. 1-SR, p. 25.

⁴⁶ I&E St. No. 1, pp. 17-18.

base rate cases in which the system is included. This recommendation is in the public interest as it ensures that the plant used to serve non-customers can be separated so that ratepayers only pay for plant that is used and useful in the provision of utility service and it establishes the existence and extent of any subsidizations to ensure that rates are properly set.

3. Rate Freeze

Section 7.03 of the Asset Purchase Agreement states that base rates will not be increased until after the second anniversary of the closing date of this transaction. I&E recommends that the Commission not approve this provision.⁴⁷

As explained by I&E witness Kubas, this provision is unreasonable for at least four reasons.⁴⁸ First, as Mr. Kubas notes, the Commission always retains the final decision as to whether and by how much utilities' rates will increase. Second, a 2-year moratorium on a rate increase does not align with PAWC's current rate case filing schedule. Third, the age of the system, projected plant additions, and use of the Fully Projected Future Test Year (FPFTY) will cause rates to diverge further from the cost to serve Brentwood customers if some sort of rate increase is not implemented. Further, Brentwood is one of many systems that PAWC has acquired from which its ratepayers pay a subsidy to cover the costs not recovered by the customers of these systems.

As Mr. Kubas explained, these types of agreement are only enforceable in the sense that PAWC will propose in its next base rate case not to increase Brentwood

⁴⁷ I&E St. No. 1, p. 21.

⁴⁸ I&E St. No. 1, p. 22.

rates.⁴⁹ However, as the Commission ultimately has the authority to set rates, this proposed rate freeze does nothing to ensure that Brentwood customers will not receive a rate increase. Provisions such as these are misleading because they give newly acquired customers a skewed picture of what will actually occur with their rates when the system they are currently served by are acquired by PAWC. It is disingenuous to mislead customers in this manner when they are facing potentially very large increases resulting from these acquisitions. Utilities owe it to their current ratepayers and potential future ratepayers to portray an accurate picture of the impact these acquisitions can actually have on their rates.

In addition, rate freezes, in general, are simply not in the public interest. Artificially holding a specific group of customers rates lower than they should be leads to unnecessary subsidizations from other ratepayers. It is a fundamental ratemaking principle that rate classes should generally pay their cost to serve. While I&E recognizes that Act 11 allows for certain subsidies for wastewater rates so long as those subsidies are in the public interest, artificially holding the Brentwood rates to a lower level creates an even larger subsidy, and therefore, a larger burden for all other PAWC customers. Creating these unnecessary subsidies is counterintuitive to sound ratemaking principles. Further, as explained above, offering these rate freezes without the ability to actually enforce them is misleading and provides customers with an inaccurate picture of what to expect of their rates as potential PAWC customers.

⁴⁹ I&E St. No. 1, p. 30.

As a result, if the Commission approves this Acquisition, the Commission should deny the rate freeze as it is not in the public interest.

4. Customer Notices

As explained above, I&E contends that the 2-year rate increase moratorium is misleading and does not portray an accurate picture of Brentwood's future rates. The rate increase contained in the customer notices for Brentwood customers is most likely not an accurate reflection of the extent to which the Brentwood rates need to be increased under PAWC ownership.

As demonstrated above, PAWC has a history of under projecting rate increase to customers in its prior acquisition proceedings. This deficiency needs to be corrected. As I&E witness Kubas explained, the Commission needs to affirm that base rate increases are likely to be higher than PAWC is projecting to customers in these notices.⁵⁰ Therefore, if the Commission approves this transaction, it should direct PAWC to provide Brentwood customers with an accurate indication of what level of rate increase they can expect and direct PAWC going forward, to provide customers of future acquisitions with an accurate assessment of the level of rate increase they should expect.

5. ALCOSAN Charges and Discounts

I&E took no specific position on the ALCOSAN charges and discounts themselves. I&E's arguments related to Brentwood's interconnection with ALCOSAN were limited specifically to the impact of the connection on PAWC's rate base and not

⁵⁰ I&E St. No. 1-SR, p. 34.

the charges themselves.

6. Specific Notice for Brentwood Customers Prior to Closing

I&E took no position related to a notice to Brentwood customers prior to closing. I&E's arguments related to Brentwood's notice related solely to the fact that the notice already provided to these customers did not accurately portray the rate increases they will potentially face. If the Commission requires a further notice be provided to Brentwood customers prior to closing, I&E reiterates that the notice should provide the most accurate information related to how much of a potential rate increase Brentwood customers face.

7. Payment Agent in Brentwood

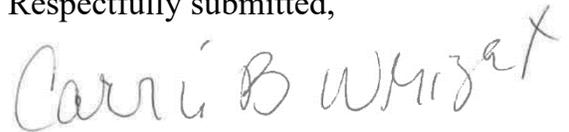
I&E took no position on whether or not there should be a Payment Agent in the Brentwood Borough. I&E would not, however, be opposed to their being such an agent.

V. CONCLUSION

The proposed transaction as filed will not affirmatively promote the public interest in a substantial way. Therefore, I&E recommends that the Application be denied. In the alternative, if the Commission approves Pennsylvania American Water Company's Application, I&E respectfully requests that the Commission require PAWC to provide a separate cost of service study for the Brentwood System as part of its next base rate filing that specifically removes the portion of the Brentwood System used to serve non-customer, deny the proposed rate freeze as not in the public interest, direct Pennsylvania American Water to provide customers with the full potential rate impact of this Acquisition, and not permit closing to occur unless and until Brentwood provides proof to PAWC's satisfaction that it has (1) identified all missing easements including public

rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so that PAWC's ratepayers are not burdened with those costs and associated expenses.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright". The signature is written in black ink and is positioned to the right of the typed name.

Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

List of I&E Sponsored Testimony and Exhibits

I&E Statement No. 1 – The Direct Testimony of Joseph Kubas

I&E Exhibit No. 1 – The Exhibit to Accompany the Direct Testimony of Joseph Kubas

I&E Statement No. 1-SR – The Surrebuttal Testimony of Joseph Kubas

I&E Statement No. 2 – The Direct Testimony of DC Patel

I&E Exhibit No. 2 – The Exhibit to Accompany the Direct Testimony of DC Patel

Proposed Findings of Fact

1. Parties

- a. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code. 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).
- b. The I&E analysis in the proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interest of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1, p. 1.
- c. PAWC is the Commonwealth's largest investor-owned provider of water and wastewater services.
- d. PAWC serves a combined population of over 2.3 million customers in Pennsylvania. PAWC St. No. 1, p. 14.
- e. Brentwood owns and operates a wastewater collection system and conveyance system which collects wastewater from that furnishes wastewater service to approximately 3,980 active customers. PAWC St. No. 1, p. 16.

2. The Asset Purchase Agreement

- a. The negotiated purchase price for the acquired assets is \$19,364,443. PAWC St. No. 1, p. 12.
- b. PAWC is requesting a fair market value rate base level of \$19,364,443. PAWC, St. No.1, p. 124.

3. Overview of the Transaction

- a. PAWC's application is seeking to utilize the process set forth in Section 1329 to determine the fair market value of the Brentwood system assets and the ratemaking rate base of those assets. PAWC St. No. 1, p. 4.

- b. PAWC selected Jerome C. Weinert, Principal and Director of Weinert Appraisals and Depreciations Services, LLC to perform an appraisal of the Brentwood system.
- c. Brentwood selected Gannett Flemming, LLC to perform an appraisal of the Brentwood system.
- d. Mr. Weinert determined that the fair market value of the Brentwood system assets is \$22,721,549.
- e. Gannett Flemming determined that the fair market value of the MACM system assets is \$20,934,000.
- f. PAWC witness Everette calculates that for Year 1, the transaction will create a revenue requirement of \$4,695,000 with an annual revenue deficiency of \$664,000. PAWC Appendix 18-d, as amended, AWW, p. 4.
- g. PAWC's 5-year capital investment obligation is \$8,055,000. Exhibit DJH-2.

4. Witness Qualifications

- a. Witness Kubas is a Fixed Utility Valuation Engineer employed by the Commission's Bureau of Investigation and Enforcement. Mr. Kubas has testified or submitted testimony in multiple prior Commission proceedings, which are outlined in Appendix A of I&E Statement No. 1. Appendix A addresses his utility specific training, and his formal educational background. Mr. Kubas is a credible witness.
- b. Witness Patel is a Fixed Utility Financial Analyst employed by the Commission's Bureau of Investigation and Enforcement. Mr. Patel has submitted testimony or provided assistance in multiple prior Commission proceedings, which are outlined in Appendix A of I&E Statement No. 2. Appendix A also addresses his utility specific training, and his formal educational background. Mr. Patel is a credible witness.

5. PAWC's Financial Fitness

- a. No party to this proceeding challenged PAWC's financial fitness to own and operated the Brentwood system.

6. PAWC's Technical Fitness

- a. No party to this proceeding challenged PAWC's technical fitness to own and operated the Brentwood system.

7. PAWC's Legal Fitness

- a. No party to this proceeding challenged PAWC's legal fitness to own and operated the Brentwood system.

8. Rate Base

- a. To be included in rate base, utility plant must be used and useful. I&E St. No. 1, p. 11.
- b. Brentwood's system currently serves "non-customers." I&E St. No. 1, p. 10.
- c. The purchase price of the system currently includes the value of plant used to serve non-customers. I&E St. No. 1, p. 12.
- d. Neither PAWC nor Brentwood have conducted a study to determine the value of the plant used to serve non-customers. I&E St. No. 1, p. 13.
- e. If acquired by PAWC Brentwood and current PAWC customers should not have to pay for any plant that is built for the purpose of conveying wastewater of other municipalities at no charge. I&E St. No. 1, pp. 14-15.
- f. A cost of service study can be conducted to determine the value of the plant used to serve non-customers so this amount can be removed from rate base.

9. Affirmative Public Benefits

- a. The lack of an immediate rate impact as a result of the 2 year rate freeze agreed upon in the APA under the acquisition is not a substantial benefit to the Brentwood customers.
- b. PAWC cannot quantify when alleged operational efficiencies will benefit PAWC customers. OCA St. No. 1, pp. 17-18.
- c. The acquisition's impact on existing PAWC water and wastewater customers cannot accurately be predicted and that these issues need to be decided in future base rate cases. PAWC Application, Appendix A-14, St. No. 4, p. 3; I&E St. No. 2-SR, p. 5.

- d. Brentwood's cost of capital is 4.37%. OCA St. No. 1, p. 13.
- e. Financially Brentwood is not in distress. Appendix A-13, p. 5.
- f. Brentwood has no issues operating or maintaining its system. Appendix A-18-a, p. 1.
- g. The Brentwood system has "good cashflow." OCA St. No. 1, p. 14.

10. Cost of Service Studies

- a. Without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing PAWC customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised.
- b. The goal of a cost of service study is to determine a utility's revenue requirement to provide service to its different customer classes. I&E Stmt. No. 1, p. 17.
- c. A cost of service study can establish the existence and extent of subsidization and assist in determining the appropriate amount of revenue requirement to be shifted from the wastewater customers to water customers. I&E St. No. 1, p. 18.
- d. Because the system is designed to convey the wastewater of non-customers, a cost of service study that removes all plant and expenses associated with the service to non-customers must be conducted. I&E St. 1, pp. 18-19

11. Ratemaking Rate Base

- a. The requested rate base level is \$19,364,443. I&E St. No. 1, p. 4.
- b. Only plant used and useful to serve customers can be included in rate base. I&E St. No. 1, p. 11.
- c. The requested ratemaking rate base of \$19,634,443 includes plant used to serve non-customers. I&E St. No. 1, pp. 11-12.

12. Rate Freeze

- a. PAWC has proposed no to increase rates for the Brentwood system until after the second anniversary of the Closing Date of this acquisition. APA Section 7.03.

- b. The Commission is the entity that will make the final determination as to whether and to what extent rates will increase for Brentwood customers. I&E St. No. 1, p. 22.
- c. Because the Commission ultimately retains its ratemaking authority despite the agreement in the APA promises like this rate freeze are unrealistic and misleading. I&E St. No. 1, p. 23.

13. Rates

- a. The customer notice to existing Brentwood customers indicated a potential increase of 11% to their rates at the time of PAWC's next base rate case filing. Appendix A-18-d amended.
- b. PAWC has a proven history of under projecting the revenue shortfall in the first base rate case after acquiring a system under 1329. I&E St. No. 1, p. 29.
- c. The potential 11% increase provided in the customers notices to existing Brentwood customers is likely understated.

Proposed Conclusions of Law

1. Commission Jurisdiction

- a. The Commission has jurisdiction over the subject matter of this proceeding. 66 Pa.C.S. §§ 507, 102, 1103, 1329.
- b. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code. 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

2. Burden of Proof

- a. PAWC, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application. 66 Pa. C.S. § 332(a).
- b. In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- c. To satisfy its burden, PAWC must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved.
- d. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- e. PAWC has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 1329 of the Code.

3. Legal Standards

- a. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102.

- b. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. Under these Sections, a Certificate of Public Convenience shall be granted “only if the commission 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. §§ 1102-1103.
- c. These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).
- d. Under Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Brentwood. *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).
- e. In assessing PAWC’s Application, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).
- f. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).
- g. “...services and upgrades that are the result of the acquiring utility’s size and fitness are substantial affirmative public benefits is not consistent with *City of York* and its progeny. This is particularly true when the existing system is already operating safely and reliably.” *Cicero v. Pa. Pub. Util. Comm’n*, 910 CD 2022 (July 23, 2023).
- h. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. 66 Pa. C.S. § 1329.

- i. Section 1329's fair market valuation approach dictates that once the buyer and the seller agree to its use, they must engage the services of a licensed engineer to assess the tangible assets of the seller. The licensed engineer assessment is then presented to two UVEs, one to represent the buyer and one to represent the seller, to conduct independent analyses based on the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. 66 Pa. C.S. § 1329.
- j. PAWC's request to assume municipal contracts currently held by Brentwood is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval. 66 Pa. C.S. §507.

Proposed Ordering Paragraphs

IT IS ORDERED THAT:

1. Pennsylvania American Water Company's Application under Section 1102(a) and 1329 of the Pennsylvania Public Utility Code for approval of (l) the transfer, by sale, of substantially all 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 Borough of Brentwood and to Provide Wastewater Service to the Public in the Borough of Brentwood in Allegheny County, Pennsylvania does not affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way and the Application is hereby denied.

**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 wastewater :
collection and conveyance system : Docket No. A-2021-3024058
owned by the Borough of Brentwood :
and to provide wastewater service to the :
public in the Borough of Brentwood in :
Allegheny County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated November 30, 2023, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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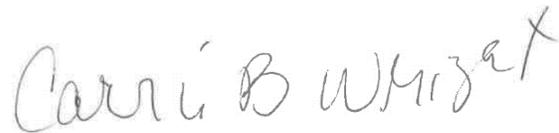
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