



Sydney N. Melillo, Esquire
Direct Dial: 215.665.3286
sydney.melillo@obermayer.com

Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street | Suite 3400
Philadelphia, PA 19102-2101
P: 215.665.3000
F: 215.665.3165

November 30, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Docket No. A-2021-3024058– Application of Pennsylvania-American
Water Company to Acquire the Wastewater System Assets of the
Borough of Brentwood**

Dear Secretary Chiavetta:

We are counsel to the Borough of Brentwood (the “Borough”) in the above-referenced matter, and are submitting, with this letter, the Borough’s Main Brief.

This document is being served via electronic mail on all parties of record. This document was also filed electronically with the Public Utility Commission on this date.

Thank you.

Very truly yours,

Sydney N. Melillo

CC: All parties of record
Thomas Wyatt, Esq.
Matthew S. Olesh, Esq.

CERTIFICATE OF SERVICE

I, Sydney N. Melillo, Esq., hereby certify that I have served a true and correct copy of the foregoing document upon the following parties via electronic mail:

The Honorable The Honorable Katrina
Dunderdale, Administrative Law Judge
Nicholas Miskanic, Legal Assistant
Pennsylvania Public Utility Commission
kdunderdal@pa.gov
nmiskanic@pa.gov

Elizabeth Triscari, Esq.
Erin K. Fure, Esq.
Director, Corporate Counsel
Pennsylvania American Water Company
Elizabeth.Triscari@amwater.com
Erin.Fure@amwater.com

David P. Zambito, Esq.
Jonathan P. Nase, Esq.
Cozen O'Connor
dzambito@cozen.com
jnase@cozen.com

Sharon Webb, Esq.
Office of Small Business Advocate
swebb@pa.gov

Christine Maloni Hoover, Esq.
Aron J. Beatty, Esq.
Andrew J. Zerby, Esq.
Office of Consumer Advocate
OCAPAWCBrentwood@paoca.org

Carrie B. Wright, Esq.
Bureau of Investigation and Enforcement
carwright@pa.gov

Scott T. Wyland, Esq.
Elana D. Schnall, Esq.
Salzmann Hughes, P.C.
swyland@salzmannhughes.com
eschnall@salzmannhughes.com

Chester R. Babst, III, Esq.
Robert Max Junker, Esq.
Laura Stone, Esq.
Babst Calland Clements & Zomnit, P.C.
cbabst@babstcalland.com
rjunker@babstcalland.com
lstone@babstcalland.com

/s/ Sydney N. Melillo

Dated: November 30, 2023

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Honorable Katrina Dunderdale, Presiding

In re: Application of Pennsylvania-American Water : Docket No. A-2021-3024058
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa C.S. § 1102(a), for approval :
of (1) the transfer, by sale, of substantially all of the :
Borough of Brentwood’s assets, properties and rights :
related to its wastewater collection and conveyance :
system to Pennsylvania-American Water Company, :
and (2) the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in the Borough of Brentwood, :
Allegheny County, Pennsylvania :

**MAIN BRIEF OF
THE BOROUGH OF BRENTWOOD**

/s/ Matthew S. Olesh

Matthew S. Olesh, Esquire (PA I.D. 206553)
Sydney N. Melillo, Esquire (PA I.D. 328031)
Thomas Wyatt, Esquire (PA I.D. 89342)
Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com
Sydney.Melillo@obermayer.com
Counsel for the Borough of Brentwood

Dated: November 30, 2023

TABLE OF CONTENTS

I. STATEMENT OF THE CASE..... 1

A. Procedural History..... 1

B. Overview of the Proposed Transaction..... 4

II. BURDEN OF PROOF 6

III. SUMMARY OF ARGUMENT 7

IV. ARGUMENT..... 9

A. Section 1102 and 1103 Issues 9

1. Fitness..... 10

2. Substantial Public Benefits Test 13

a. Benefits to the System and ALCOSAN region 14

b. Benefits to Brentwood customers 17

c. Weighing Aforementioned Benefits Against Any Harms..... 20

d. Conclusion 24

B. Section 1329 Issues..... 24

1. Fair Market Value for Ratemaking Purposes..... 24

2. Tariff and Rates 24

3. DSIC 24

4. Claims for AFUDC and Deferred Depreciation..... 24

5. Transaction and Closing Costs 25

6. Additional Issues 25

a. Plant in Service Used to Serve “Non-Customers” 25

b. Is the Rate Freeze a Rate Stabilization Plan? 25

c. Should Future Customer Notices Show a Range of Impacts? 25

C. Section 507 Issues..... 25

D. Preservation of the Z Agreement and other Z Agreements 25

E. Recommended Conditions for Approval 25

1. Missing Easements and Other Property Rights..... 25

2. Cost of Service Studies..... 25

3. Rate Freeze 25

4. Customer Notices 25

5. ALCOSAN charges and discounts 26

6. Specific Notice for Brentwood customers prior to closing 26

7. Payment agent in Brentwood..... 26

V. CONCLUSION OF REQUESTED RELIEF 27

Appendix A – List of the Borough of Brentwood Sponsored Testimony and Exhibits

Appendix B – Proposed Findings of Fact

Appendix C – Proposed Conclusions of Law

Appendix D – Proposed Ordering Paragraph

TABLE OF AUTHORITIES

<u>State Cases</u>	Page(s)
<i>Cicero v. Pennsylvania Pub. Util. Comm’n</i> , 300 A.3d 1106 (Pa. Cmwlth. 2023)	10
<i>City of York v. Pennsylvania Pub. Util. Comm’n</i> , 295 A.2d 285 (1972)	7, 9
<i>Hess v. Pennsylvania Pub. Util. Comm’n</i> , 107 A.3d 246 (Pa. Cmwlth. 2014)	9
<i>In Re Byerly</i> , 270 A.2d 186 (Pa. 1970)	7
<i>McCloskey v. Pennsylvania Pub. Util. Comm’n</i> , 195 A.3d 1055 (Pa. Cmwlth. 2018).....	9
<i>Popowsky v. Pennsylvania Pub. Util. Comm’n</i> , 937 A.2d 1040 (Pa. 2007)	9
<i>Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n</i> , 578 A.2d 600 (Pa. Cmwlth. 1990)	7
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950)	7
 <u>State Statutes</u>	
66 Pa.C.S. § 332	6
66 Pa C.S. § 1102	<i>passim</i>
66 Pa.C.S. § 1103	<i>passim</i>
 <u>Other</u>	
52 Pa. Code § 5.501	1
<i>Re Perry Hassman</i> , 55 PA PUC 661 (1982)	11, 12
<i>Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC, Docket No. A-2013-2353647</i> , 309 P.U.R.4th 213 (2013)(2013)	10

I. STATEMENT OF THE CASE

Pursuant to the briefing schedule established by the Honorable Katrina Dunderdale and in accordance with Commission Regulations at 52 Pa. Code § 5.501, the Borough of Brentwood (hereinafter “Brentwood” or the “Borough”) hereby submits this Main Brief in support of the Application of Pennsylvania-American Water Company (hereinafter “Pennsylvania-American” or the “Company”) for approval to acquire the Borough’s wastewater collection and conveyance system pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (the “Application”).

The Borough respectfully requests that the Commission approve the Application.

A. Procedural History

This proceeding concerns Pennsylvania-American’s Application for approval to acquire the Borough’s System filed with the Commission in March 2023. By Secretarial Letter dated July 20, 2023, the Commission conditionally accepted Pennsylvania-American’s Application. On September 14, 2023, the Commission, by Secretarial Letter, accepted the Application for filing and assigned Administrative Law Judge Katrina L. Dunderdale to preside over the proceeding. The Commission assigned the Application to Docket No. A-2021-3024058.

The Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance and Notice of Intervention on April 7, 2023. Similarly, the Office of Consumer Advocate (“OCA”) filed a Protest in this proceeding on May 4, 2023 and the Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance on May 12, 2023.¹ On October 2, 2023, the Borough filed its Petition to Intervene to adequately address the interests of Brentwood in this proceeding as the owner and operator of the System.

¹ OCA, OSBA, and I&E will be referred to collectively as the “Statutory Advocates,” unless individually identified.

On October 11, 2023, the Allegheny County Sanitary Authority (“ALCOSAN”) filed a Petition to Intervene to protect its interests as the exclusive wastewater treatment provider in the region pursuant to the Pittsburgh Zone Project Agreement of December 1, 1949, among ALCOSAN, the City of Pittsburgh, and the Borough (the “Z Agreement”). *See generally* ALCOSAN Statement No. 1, Direct Testimony of Douglas Jackson, P.E; *see also* Z Agreement, attached to Pennsylvania-American’s Application as Appendix A-25.3. As a result of significant environmental challenges in its service area, ALCOSAN has been subject to a consent decree with the United States Environmental Protection Agency (“EPA”), the Pennsylvania Department of Environmental Protection (“PaDEP”), and the Allegheny County Health Department (“ACHD”) since 2008, modified as recently as May 2020 (hereinafter the “Modified Consent Decree”). *See* PAWC Statement No. 2, Direct Testimony of Daniel Hufton, P.E., pp. 11–12. Brentwood, as party to the Z Agreement, is also bound by the terms of the Modified Consent Decree. *See* Brentwood Statement No. 1, Direct Testimony of George Zboyovsky, pp. 6, 7.

Before the Application was filed, Brentwood, ALCOSAN, and Pennsylvania-American engaged in numerous discussions to preserve the integrity of the Z Agreement and ensure continued compliance with the Modified Consent Decree if the Proposed Transaction is approved. As a result of this collaboration, Brentwood and Pennsylvania-American entered into a Cooperation and Allocation of Responsibilities Agreement (the “Cooperation Agreement”), which sets forth and allocates certain rights and obligations from Brentwood to Pennsylvania-American under the Z Agreement. *See* the Cooperation Agreement, attached to Pennsylvania-American’s Application as Appendix A-25.3.

An initial telephonic prehearing conference for the Application was held on Tuesday, October 17, 2023. Pursuant to the Prehearing Conference Order issued by Judge Dunderdale, a

litigation schedule was set providing, *inter alia*, for evidentiary hearings on November 8, 2023 and November 14, 2023.

The following parties prepared and pre-served written testimony on behalf of Brentwood in this proceeding: (1) Brentwood Statements Nos. 1 and 1-R, Direct and Rebuttal testimony of George Zboyovsky, the Borough Manager; and (2) Brentwood Statement No. 2, Direct testimony of Harold Walker III from Gannett Fleming Valuation and Rate Consultants, LLC, the UVE engaged by the Borough. At the November evidentiary hearings, all pre-served written testimony and exhibits exchanged by the parties were entered into the record. Additionally, the following witnesses provided oral rejoinder testimony and/or underwent cross-examination at the evidentiary hearings: Michael Salvo, Daniel Hufton, P.E., and Ashley E. Everette on behalf of Pennsylvania-American; George Zboyovsky on behalf of the Borough; Nicholas A. DeMarco and Barbara R. Alexander on behalf of the OCA; and Joseph Kubas on behalf of I&E. All other witnesses were excused from attending the evidentiary hearings. On November 14, 2023, the evidentiary hearing was adjourned.

Importantly, as stated above, Brentwood, ALCOSAN, and Pennsylvania-American have worked collaboratively to ensure the preservation of the Z Agreement and continued compliance with the Modified Consent Decree. Toward that end, Brentwood, ALCOSAN, and Pennsylvania-American combed through the Application – including, but not limited to, the Z Agreement, the Cooperation Agreement, and the Asset Purchase Agreement dated December 22, 2020, and First Amendment to the Asset Purchase Agreement dated March 2, 2023, between Pennsylvania-American and Brentwood (the “APA”) – to ensure that each party understands and agrees to honor all respective duties and obligations if the Proposed Transaction is approved. Through this process, Brentwood, ALCOSAN, and Pennsylvania-American uncovered minor, but necessary,

modifications to Schedules 4.05, 4.13 and 5.04 of the APA. Thus, Brentwood, ALCOSAN, and Pennsylvania-American entered into a stipulation to memorialize the minor modifications to the APA's Schedules (the "Initial Stipulation"). The Initial Stipulation was filed on November 8, 2023 and marked for identification as ALJ-1 at the evidentiary hearing on November 8th, but not moved into evidence as the stipulating parties expected to re-file the stipulation with the revised schedules attached.

After the evidentiary hearing on November 8th adjourned, Brentwood, ALCOSAN, and Pennsylvania-American discovered a clerical discrepancy between the Schedules to the APA in Exhibit J of the Application and the Schedules to the APA included in Appendix A to the Application. Thus, The Initial Stipulation was revised and amended to correct the clerical discrepancy, provided to each parties' respective clients for approval, and finalized (the "Amended Stipulation").

The Amended Stipulation was executed the morning of the evidentiary hearing on November 14th, 2023, provided to all parties to this proceeding via electronic correspondence, and marked for identified as ALJ-2 at the evidentiary hearing on November 14th. Ultimately, the Amended Stipulation – that merely corrected a clerical error in the Initial Stipulation – was not admitted into the evidentiary record due to concerns regarding prejudice and due process. Brentwood maintains its position that the Amended Stipulation was improperly not admitted into the record because the Statutory Advocates had ample time to review the Initial Stipulation and the Amended Stipulation, which corrected a clerical error and left the substantive content of the Initial Stipulation virtually unchanged.

B. Overview of the Proposed Transaction

Brentwood owns and operates the Borough's wastewater collection and conveyance system (the "System"), which consists of approximately 200,000 linear feet of gravity collection

mains and approximately 1,050 manholes, associated infrastructure and appurtenances, and numerous related land rights. *See* Brentwood Statement No. 1, p. 5. As of the date of filing the instant Application, the Brentwood System serves approximately 3,890 active commercial and residential customers. *See id.*

The Brentwood System's pipe network is split into two watersheds located at Point of Connection MH-89 (Saw Mill Run) and Point of Connection MH-42 (Streets Run), which are both part of the ALCOSAN service area. *See id.* at p. 6. The Borough's sewage flows through a series of intermunicipal trunk lines that flow through downgradient communities for treatment by ALCOSAN, the exclusive wastewater treatment provider in the greater Pittsburgh area pursuant to the Z Agreement. *See id.*; *see also* ALCOSAN Statement No. 1, p. 2.

Due to the significant environmental compliance issues that plague its region, ALCOSAN has been subject to a consent decree with the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Allegheny County Health Department ("ACHD") since 2008, modified as recently as May 2020 (hereinafter the "Modified Consent Decree"). *See* PAWC Statement No. 2, pp. 11–12. As a result, the Borough and its System are also bound by the terms of the Modified Consent Decree. *See* Brentwood Statement No. 1, pp. 6, 7. Similarly, through 16 of the last 19 years, the Borough itself has also been under regulatory order with the ACHD to remediate several environmental compliance concerns in its operation of the System. *See* PAWC Statement No. 2-R, Rebuttal Testimony of Daniel Hufton, P.E., pp. 5.

Accordingly, with the aforementioned environment challenges and costly upgrades necessary to bring the System into compliance looming, the Borough Council was faced with the reality that significant investment into the System was necessary – leading the Borough's duly-

elected officials to determine that a sale of the System to a third-party Commission-regulated utility like Pennsylvania-American, was in the best interests of its residents. *See generally id.* at pp. 9–11 (discussing the Borough’s deliberative process in exploring a sale). Moreover, Pennsylvania-American’s enhanced access to capital and its particular expertise bringing out-of-compliance systems like Brentwood into compliance, *inter alia*, were critical to the Borough Council’s ultimate determination that this Proposed Transaction was in the best interest of the Borough. *See* Brentwood Statement No. 1-R, Rebuttal Testimony of George Zboyovsky, pp. 6, 7. As such, after a lengthy deliberative process with multiple opportunities for public participation and input, the Borough Council voted unanimously to approve the sale to Pennsylvania-American.

With the sale of its System, the Borough also must ensure the preservation and enforcement of its rights and obligations under the Z Agreement. Thus, Pennsylvania-American and Brentwood entered into the Cooperation and Allocation of Responsibilities Agreement setting forth duties and obligations of the Borough and Pennsylvania-American under the Z Agreement and, more specifically, to ensure continued compliance with the Modified Consent Decree. *See* PAWC No. 1, Direct Testimony of Michael Salvo, pp. 9–10; *see also* ALCOSAN Statement No. 1, pp. 9–10.

Ultimately, the Borough Council’s decision to sell the System strikes a balance between the need for capital improvement to remedy environmental challenges posed by the aging System to ensure public safety and welfare without placing Brentwood customers at risk for significant, unreasonable rate increases.

II. BURDEN OF PROOF

The Public Utility Code requires Commission approval via issuance of a Certificate of Public Convenience to permit a public utility to acquire property that is used or useful in the public service. *See* 66 Pa.C.S. § 1102(a)(3). Pursuant to the Public Utility Code (the “Code”), the burden of proof rests with the applicant – here, Pennsylvania-American. *See id.* § 332. The Pennsylvania

Supreme Court has explained “burden of proof” means a duty to establish a fact by a preponderance of the evidence, meaning that the party has presented evidence more convincing than the evidence by the opposing party. *See Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *see also Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990) (upholding the use of a preponderance of the evidence standard to an application filed with the Commission). If the party with the burden of proof establishes a *prima facie* case, the burden of proof shifts to the opposing party to rebut the *prima facie* case. *In Re Byerly*, 270 A.2d 186 (Pa. 1970). If the respondent presents evidence sufficient to rebut the *prima facie* case, the burden of proof shifts back to the party with the burden of proof to submit additional evidence.

III. SUMMARY OF ARGUMENT

The Public Utility Code requires Commission approval via the issuance of a Certificate of Public Convenience for Pennsylvania-American to acquire Brentwood’s wastewater assets. To issue such approval, the Commission must find that granting of such a certificate “is necessary or proper, for the service, accommodation, convenience, or safety of the public.” *See* 66 Pa.C.S. § 1103(a). In other words, Pennsylvania-American must demonstrate that Proposed Transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pennsylvania Pub. Util. Comm’n*, 295 A.2d 825, 828 (1972). This standard, as interpreted by the Pennsylvania courts, essentially requires Pennsylvania-American to establish that the benefits of the Proposed Transaction outweigh any purported harms of the Proposed Transaction. For the reasons set forth herein, Pennsylvania-American has clearly met this burden.

The ALCOSAN region as a whole is plagued by environmental challenges such that the Borough has remained under regulatory order with ACHD for 16 of the last 19 years, and ALCOSAN has been subject to consent decrees with the EPA, PaDEP, and ACHD since 2006.

While Brentwood has worked diligently to comply with the regulatory orders with ACHD and the Modified Consent Decree, the Borough has been unable to operate its System in a manner that does not require regulatory oversight. The Borough's eight-person Public Works Department pales in comparison to Pennsylvania-American's approximate 1,200 professionals whose sole focus and priority day-to-day is the provision of safe, reliable, and cost-efficient water and wastewater service. In other words, Pennsylvania-American's expertise improving aging wastewater systems with the same or similar compliance issues as the ALCOSAN region, in addition to the enhanced customer service due to Pennsylvania-American's large team of customer service representatives, in-house engineering teams, and field work service crews will be a marked improvement of the status quo in Brentwood and the ALCOSAN region at large.

Although Pennsylvania-American's expertise and enhanced customer service may result in slight rate increase to Brentwood customers, it is important to acknowledge that Brentwood's rates were certain to increase regardless of ownership of the System. Thus, in the face of an inevitable rate increase due to the environmental challenges that are only exacerbated by the nearly 100-year-old System, Brentwood respectfully submits that the sale to a Commission-regulated utility like Pennsylvania-American will provide substantial affirmative public benefits to the Borough, its residents, and the ALCOSAN region. The modest estimated rate increase that may be imposed by Pennsylvania-American (that will ultimately be subject to the Commission's review and approval) as a result of the Proposed Transaction simply does not outweigh the numerous benefits set forth in the evidentiary record – especially in light of the significant environmental issues in the region.

IV. ARGUMENT

A. Section 1102 and 1103 Issues

Pennsylvania-American is seeking a Certificate of Public Convenience from the Commission to acquire property used or useful in public service, as required under 66 Pa.C.S. § 1102(a)(1) and 1102(a)(3). The Commission will issue a Certificate of Public Convenience pursuant to Section 1102 of the Code when the Commission finds that the granting of such certificate “is necessary or proper, for the service, accommodation, convenience, or safety of the public.” *See* 66 Pa.C.S. § 1103(a). Importantly, the Pennsylvania Courts have determined that a Certificate of Public Convenience need not be “absolutely necessary” to be granted as “not only would this approach be impractical and unrealistic, **but it would also actually pose a danger to the health, safety, and welfare of the public.**” *See Hess v. Pennsylvania Pub. Util. Comm’n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014) (emphasis added).

Moreover, the Pennsylvania courts have interpreted this provision to require a showing that the Proposed Transaction will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *See, e.g., City of York v. Pennsylvania Pub. Util. Comm’n*, 295 A.2d 285, 828 (1972) (quoting 66 Pa.C.S. § 1103). More specifically, the Pennsylvania Supreme Court explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make fact-based determinations (including predicted ones informed by expert judgment) concerning certification matters. *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 937 A.2d 1040, 1055–1056 (Pa. 2007).

Significantly, in *McCloskey v. Pennsylvania Pub. Util. Comm’n*, the Commonwealth Court specifically re-affirmed that the Commission must only address the potential rate impact of a

proposed acquisition “in a general fashion” in the balancing test required by section 1102 of the Code. *See* 195 A.3d 1055, 1066–67 (Pa. Cmwlth. 2018). Thus, a potential impact on rates does not automatically render a transaction detrimental to the public; instead, the Commission must assess whether the impact of rates is outweighed by other positive factors that the acquisition – on the whole – will confer substantial public benefits.²

Here, Pennsylvania-American not only has the requisite technical, legal and financial fitness to own and operate the aging System but, as set forth in more detail below, ALCOSAN and the entire region will affirmatively benefit from the partnership with Pennsylvania-American – an industry expert with significantly more time, resources, expertise, and staff to achieve the goals established in the Z Agreement, Modified Consent Decree, and other applicable consent orders and agreements.

1. Fitness

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). Here, it is undisputed that Pennsylvania-American has the requisite technical, financial and legal fitness to own and operate the System.

To show legal fitness, Pennsylvania-American must demonstrate that it has obeyed the Code, and Commission Regulations and Orders. *Re Perry Hassman*, 55 PA PUC 661 (1982).

² In a more recent case, *Cicero v. Pennsylvania Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *petitions for allocatur pending*, the Commonwealth Court reversed the Commission’s approval of a public utility’s acquisition of a local, municipally-owned wastewater system after finding that the transaction did not meet the substantial affirmative public benefit test under section 1102 because the benefits set forth in the application did not outweigh the prospective harms.

Here, Pennsylvania-American is a public utility operating under certificates of public convenience granted by the Commission with a good compliance history. PAWC Statement No. 1, p. 21. Additionally, there are no pending legal proceedings that would suggest that Pennsylvania-American is not legally fit to provide safe and adequate service. *Id.* Thus, Pennsylvania-American clearly satisfies the criteria for legal fitness. *Id.*

To show financial fitness, Pennsylvania-American must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra.* Here, Pennsylvania-American – a subsidiary of American Water Works Company, Inc. – is the largest water and wastewater provider in Pennsylvania with a demonstrated history of financial stability. *See* PAWC Statement No. 1, p. 21; *see also* PAWC Statement No. 3, Direct Testimony of Ashley Everette, pp. 3-5 (discussing Pennsylvania-American’s financial fitness to provide high quality wastewater service and implementing capital improvement plans). More specifically, Pennsylvania-American has total assets of \$5.9 billion and annual revenues of \$769 million in 2021. PAWC Statement No. 3, p. 3. Due to its strong operating and financial performances, Pennsylvania-American has access to capital to support its acquisition of the System, including the ongoing operating and investment commitments required to operate the System and serve the public. *Id.* at pp. 3–4. For example, Pennsylvania-American has a \$400 million line of credit, long-term debt financing at favorable interest rates and payment terms, and may obtain additional equity investments all through American Water Capital Corp. *Id.* at p. 4. As such, Pennsylvania-American satisfies this criterion as well.

Finally, to show technical/managerial fitness, Pennsylvania-American must have sufficient staff, facilities and operating skills to provide the proposed service. *See Hassman, supra.* Again, Pennsylvania-American easily satisfies this standard here. As the largest investor-owned water

and wastewater utility in the Commonwealth, Pennsylvania-American will seamlessly integrate the operation of the System into its current operations. *See* PAWC Statement No. 1, pp. 22–23. For example, if the Proposed Transaction is approved, the Pennsylvania-American staff assigned to Brentwood will report directly to the operations team located in McKeesport – only eight miles away from the Borough. *See* Brentwood Statement No. 1-R, Rebuttal Testimony of George Zboyovsky, p 3. The operations team in McKeesport includes a Senior Operations Superintendent, Senior Operations Supervisor, Operations Supervisor, and Water Quality Supervisor that are all solely dedicated to wastewater operations. *See id.* This immediate integration of Brentwood’s System into Pennsylvania-American’s larger compliance organization will not only benefit the customers in Brentwood, but the entire ALCOSAN region plagued by the same or similarly environmental challenges.

As stated above, there is no dispute that Pennsylvania-American is technically, legally, and financially fit to provide wastewater service in the Commonwealth; nonetheless, the Application makes it clear that Pennsylvania-American has the requisite technical, legal, and financial fitness to own and operate Brentwood’s System and as a partner to ALCOSAN to address the environmental challenges in the region. Moreover, while a public utility’s fitness to provide wastewater service does not alone satisfy the burden to prove substantial affirmative public benefits under section 1102, Pennsylvania-American’s fitness – as the largest investor-owned water and wastewater provider in the Commonwealth with nearly 1,200 professionals whose sole focus is the provision of safe, reliable, and cost-efficient water and wastewater service – cannot be overlooked as an overwhelming benefit of this Proposed Transaction. Pennsylvania-American’s size, wastewater expertise, and financial acumen is a significant improvement from the status quo

for wastewater service in Brentwood and provides the ALCOSAN region with a proven industry expert to finance and implement the necessary infrastructure improvements for the aging System.

2. Substantial Public Benefits Test

Pennsylvania-American is legally, technically, and financially fit to purchase Brentwood's System – and that is undisputed. However, under section 1102, Pennsylvania-American must also establish that the Proposed Transaction will provide substantial affirmative public benefits in some substantial way. For the reasons set forth below, Brentwood respectfully submits that the Proposed Transaction satisfies this burden given the numerous affirmative benefits set forth in the evidentiary record.

As Mr. Zboyovsky explained in his testimony, the Borough initially identified the following two primary benefits to Brentwood specifically from the Proposed Transaction: (1) engaging an industry expert to address the compliance issues posed by the nearly 100-year-old System that contributes to the region-wide environmental challenges, while simultaneously lessening the financial burden to Brentwood in maintaining the System; and (2) enhancing the operation/management of the System and customer service to Brentwood customers by a large team whose sole focus is utility service – allowing the Borough to reallocate administrative time and expense to focus on other Borough responsibilities. *See* Brentwood Statement No. 1, p. 14.

That said, and as provided in more detail below, this particular transaction offers further affirmative public benefits to the System, Brentwood and its residents, and the ALCOSAN region at large with respect to addressing environmental challenges. More specifically, the benefits of the Proposed Transaction significantly outweigh any potential “harm” set forth by the Statutory Advocates in this proceeding – including the estimated modest rate impact to Brentwood customers, and to an even lesser extent, Pennsylvania-American's existing customers.

a. Benefits to the System and ALCOSAN region

The System's age has contributed to the long history of non-compliance with environmental regulations in Brentwood and one primary reason that Brentwood explored a sale of its wastewater assets. For example, more than 80% of the System was installed between 1919 and 1930 – rendering the vast majority of the System nearly or over 100 years old and further contributing to environmental challenges. *See* Brentwood Statement No. 1, p. 9. Additionally, the System's 1,050 manholes are made of concrete and brick, which are more susceptible to the corrosive sewer processes that exacerbate issues of infiltration in a wastewater system like Brentwood's. *See id.* The aging System's exacerbation of environmental compliance concerns in the region is not hypothetical; instead, for 16 of the last 19 years, the Borough has been subject to a regulatory order with the ACHD to remediate several environmental compliance concerns in its operation of the System. *See* PAWC Statement No. 2-R, Rebuttal Testimony of Daniel Hufton, P.E., p. 5; *see also* Transcript of Evidentiary Hearing, November 8, 2023, pp. 149:22–150:7. Finally, pursuant to the Z Agreement, the Borough is also bound by the terms of ALCOSAN's Modified Consent Decree. *See* Brentwood Statement No. 1, p. 6.

Therefore, despite the Borough's attempts to remedy the environmental challenges with routine repairs and required maintenance, the Borough Council recognized that it not only lacks the capital investment required to remedy the on-going environmental challenges with operating the System, but also lacks the technical ability, expertise, and professional staff to implement the necessary comprehensive repair/replacement of the aging System. *See id.* at pp. 8–9; *see also* Brentwood Statement No. 1-R, p. 5 (“I cannot recall an instance where the Borough proactively funded, designed, and implemented an improvement in its System (aside from routine required maintenance and repairs) as is evident from the fact that the majority of the System is nearly a century old.”); PAWC Statement No. 2, p. 20 (“Based on past history, Brentwood has not

proactively addressed environmental compliance issues before they rose to the level of compliance orders from the Regulatory Agencies. This is a reactive approach to environmental compliance and does not proactively address the underlying problem of lack of regular infrastructure renewal and replacement. Without a well-funded program to upgrade aging collection system assets, I believe that Brentwood will continue to experience hydraulic overloading and SSOs in portions of its System.”).

Conversely, if the Proposed Transaction is approved, the System will immediately be integrated into Pennsylvania-American’s comprehensive and proactive environmental program. *See* PAWC Statement No. 2, pp. 17–18 (explaining precisely how Pennsylvania-American will address Brentwood’s environmental issues upon closing, if the Proposed Transaction is approved). Specifically, Pennsylvania-American will immediately assign staff to commence the required work task and activities under Pennsylvania-American’s O&M Program Plan and SSO Response Plan to ensure efficient operations and maintain compliance with the current ACHD consent order and all environmental laws and regulations. *See id.* at p. 17. The Pennsylvania-American staff assigned to Brentwood will also report directly to the operations team located in McKeesport, only eight miles away from the Borough. *See* Brentwood Statement No. 1-R, p 3. The operations team in McKeesport includes a Senior Operations Superintendent, Senior Operations Supervisor, Operations Supervisor, and Water Quality Supervisor that are all solely dedicated to wastewater operations. *See id.*

Similarly, Pennsylvania-American has a dedicated compliance team with access to its statewide resources and advanced management tools, as well as the resources of its parent company to address. *See* PAWC Statement No. 2, p. 17. Pennsylvania-American also employs a Manager of Wastewater Compliance—an employee whose sole responsibility is to address

environmental compliance for all Pennsylvania-American's wastewater treatment systems in conjunction with its compliance team. *See id.* The Borough has no such employee who is solely dedicated to compliance; in fact, the Borough does not currently employ an in-house engineer at all. *See* Brentwood Statement No. 1-R, p 3. Likewise, the Borough does not have access to the same resources and tools to monitor, address, and remedy environment compliance issues. *See id.* Instead, the Borough only has eight Public Works employees assigned to sanitary sewer service (including the slew of other responsibilities for the Public Works Department). *See* Brentwood Statement No. 1, pp. 14–15; Brentwood Statement No. 1-R, pp. 2–4 (comparing Brentwood's Public Works Department to Pennsylvania-American's team).

Finally, the benefit of adding Pennsylvania-American to the environmental compliance efforts in the ALCOSAN region cannot be understated. Through the negotiations of the Proposed Transaction, Pennsylvania-American and Brentwood understood that a collaborative working relationship with ALCOSAN – the exclusive wastewater provider in the greater Pittsburgh area pursuant to the Z Agreement – is not only ideal to remedy the environmental challenges in Brentwood and the ALCOSAN region, but necessary. Thus, Pennsylvania-American has made efforts to build a relationship with ALCOSAN and commit to proactively address the environmental challenges in the ALCOSAN region if the Proposed Transaction is approved. The culmination of these efforts is Brentwood and Pennsylvania-American executing the Cooperation Agreement, which sets forth and allocates certain rights and obligations from Brentwood to Pennsylvania-American under the Z Agreement, and the aforementioned Amended Stipulation among Brentwood, ALCOSAN, and Pennsylvania-American to ensure that each party understands and agrees to honor all respective duties and obligations if the Proposed Transaction is approved.

While Pennsylvania-American’s expertise and experience are characteristics inherent to it, it is the application of its expertise and experience to the particular facts at issue here that underscores this critical transaction benefit. The evidentiary record reflects that Brentwood continues to deal with environmental issues and has struggled to do so. Moreover, it cannot seriously be questioned that Pennsylvania-American is much more capable and equipped to address any System replacements, upgrades, and other improvements/maintenance. As addressed below, I&E’s own witness, Joseph Kubas, conceded that this was the case, recognizing that (a) the Proposed Transaction did indeed present benefits, particularly to Brentwood, directly resulting from Pennsylvania-American’s ownership, and (b) the Borough would not be able to provide anywhere near the same level of service as Pennsylvania-American without significant expenditures and raising of rates (and even then, as discussed below, there is no actual evidence of record that this would even be possible beyond Mr. Kubas’ rank speculation).³

Pennsylvania-American’s plan and available, professionally trained staff to address the ongoing environmental challenges is unquestionably a marked improvement from the current state of affairs in Brentwood, and to the ALCOSAN region. Accordingly, Brentwood respectfully submits that this Proposed Transaction will not only benefit the Brentwood System, but the entire region that is plagued by similar environmental challenges given Pennsylvania-American’s expertise and proven record of environmental stewardship.

b. Benefits to Brentwood customers

As Mr. Zboyovsky, Borough Manager, testified himself, “it feels as if the Borough is often scrambling through its day-to-day administrative of sanitary sewer service and management of the System.” *See* Brentwood Statement No. 1-R, p. 4. However, if the Proposed Transaction is

³ *See* Transcript of Evidentiary Hearing, November 14, 2023, pp. 330:5–333:17.

approved, Brentwood customers will enjoy an enhanced customer service experience both administratively and operationally.

Currently, the Borough only has eight Public Works employees tasked with administration and management of sanitary sewer service in the Borough in addition to, maintaining roadways, and the stormwater system, removing snow, maintaining parks and swimming pools, controlling traffic, maintaining the Borough Stadium, maintaining four ballfields, maintaining all Borough facilities, assisting capital construction contractors, and ensuring all rights-of-way are clear of any obstruction. *See* Brentwood Statement No. 1, pp. 14–15; Brentwood Statement No. 1-R, p. 2. The Borough’s customer service hours are limited to the regular business hours of 8:00 a.m. to 4:30 p.m. *See* Brentwood Statement No. 1, p. 16. If a Borough customer experience an after-hours sewage emergency, the customer can either (1) leave a voice message with the Public Works Department that will be addressed the following day, or (2) call 911 to report the emergency, which will only be addressed the same evening if there is a public safety concern. *See id.*

Conversely, Pennsylvania-American employs approximately 1,200 professionals whose sole focus and expertise are in water and wastewater utility operations in the Commonwealth including engineering, regulatory compliance, distribution and collection system operation and maintenance, accounting, and customer service. *See* PAWC Statement No. 1, p. 14–15. Additionally, Pennsylvania-American’s call center is available from 7:00 a.m. to 7:00 p.m. for routine customer questions/concerns, and Pennsylvania-American customers can also reach a representative via electronic mail at any time at infopa@amwater.com. *See* PAWC Statement No. 2, p. 33. More importantly, Pennsylvania-American’s customer service call center is available 24/7/365 to address customer emergencies. *Id.* at 28. Further, not only can customers in an emergency situation speak with a live representative 24/7/365, Pennsylvania-American’s field

service crews are also on-call and available for emergency field work (main breaks, sewer backups, overflows) 24/7/365. *Id.*

Furthermore, if the Proposed Transaction is approved, Borough customers will have a more user-friendly bill-pay experience. While Brentwood customers currently receive two separate bills for their water and wastewater service, Borough customers will have one bill for both water and wastewater services as Pennsylvania-American also provides water service to the Borough customers. *See* Brentwood Statement No. 1, p. 15. Similarly, Brentwood administrative employees often receive calls disputing charges on their sewage bills that are related to their water usage; however, the consumption volumes used to prepare customers' monthly bills from the Borough are obtained from Pennsylvania-American. *See* Brentwood Statement No. 1-R, p. 4. Thus, these Borough employees spend valuable time and resources fielding customer billing concerns without the ability to directly resolve the customers' issues. *See* Brentwood Statement No. 1, pp. 15-16; Brentwood Statement No. 1-R, pp. 4-5. However, under the Proposed Transaction, the Borough will no longer serve as the "middleman" in this regard and customers will be able to directly communicate with Pennsylvania-American with critical questions regarding consumption as reflected on their bill. *See* Brentwood Statement No. 1, p. 5.

Finally, Brentwood currently does not provide a low-income customer assistance program to assist with paying sewer bills. *See id.* at p. 17. Instead, the only payment arrangement Brentwood offers is a standardized delinquency payment arrangement that does not consider the customer's income. *Id.* Further, the delinquency arrangement requires the customer to pay off the entire balance, regardless of the amount the customer owes over a maximum of twelve (12) months. *Id.* However, under the Proposed Transaction, Brentwood customers will have access to Pennsylvania-American's three tiers of low-income discounts to fixed and volumetric wastewater

charges. *See* PAWC Statement No. 3, p. 16–18 (describing and summarizing the available Pennsylvania-American’s low-income programs). Since Pennsylvania-American already provides water service in Brentwood, any customer already enrolled in a Pennsylvania-American low-income discount program for their water service will be automatically enrolled in the discounts available for wastewater service upon closing of the Proposed Transaction. *Id.* at 16.

As a result, the acquired Brentwood customers will experience enhanced customer service due to Pennsylvania-American’s larger and more accessible team of customer service representatives, in-house engineering teams, and field work service crews. *See* Brentwood Statement No. 1, p. 16. Similarly, Brentwood customers will benefit from the eight Public Works employees reallocation of the time and resources into other Public Works responsibilities if the Borough exits the sanitary sewer business entirely.

c. Weighing Aforementioned Benefits Against Any Harms

As set forth above, the Proposed Transaction provides numerous public benefits that will not only be experienced by Brentwood customers, but also the entire ALCOSAN region. The only harm these benefits are weighed against is a projected modest rate increase of 11%. The weight of the evidence squarely balances in favor of the benefits to be realized, which far outweigh the sole projected harm. Conversely, any argument that Brentwood would somehow possibly be able to obtain similar benefits in the absence of the Proposed Transaction (a) has no evidentiary support in the record beyond sheer speculation and (b) would only theoretically be possible (implausible as that scenario is) if the exact same asserted harm – rate increases – was imposed.

First, the Proposed Transaction adds a proven partner with a record of success of improving and correcting systems with similar compliance issues the ALCOSAN region faces. Thus, the entire region and ALCOSAN will benefit from a partnership with Pennsylvania-American—an industry expert with significantly more time, resources, skill, and professional staff to achieve the

goals established in ALCOSAN's Modified Consent Decree and Brentwood's current consent order and agreement with ACHD.

Pennsylvania-American is not only in a better position to implement a comprehensive upgrade of the System given its experience in this regard, but also a greater access to resources to investment in the upgrades than the Borough. For example, Pennsylvania-American has access to a \$400 million line of credit, long-term debt financing at favorable interest rates and payments, and additional equity investments through its parent company. PAWC Statement No. 3, p. 4.

Most of the Statutory Advocates' concern in this proceeding concerns the modest rate increase estimated by Pennsylvania-American if the Proposed Transaction is approved. As Mr. Zboyovsky testified, a rate increase to Brentwood customers is inevitable given the System's age and the on-going environmental challenges in the ALCOSAN region. *See* Brentwood Statement No. 1, p. 10; Brentwood Statement No. 1-R, pp. 7-8. However, through its deliberative process, the Borough Council discovered Pennsylvania-American's record for successfully addressing PaDEP and EPA compliance orders that require operational improvements and capital investments. *See* Brentwood Statement No. 1-R, p. 7. Recognizing that the Borough has no such comparable experience or institutional competence in this regard, the Borough's duly elected officials determined that the benefits of a partnership with an industry expert like Pennsylvania-American outweigh the prospective modest rate impact to the Brentwood customers. *See id.* ("There is no question that Pennsylvania-American has more experience in evaluating and improving water and wastewater systems to remedy on-going environmental challenges. No amount of money available to the Borough can outweigh the invaluable expertise Pennsylvania-American brings to improving Brentwood's aging wastewater system facing the environmental challenges in this region.").

However, with a sale to a Commission-regulated public utility like Pennsylvania-American, any future potential rate increase proposed by Pennsylvania-American is subject to regulatory oversight. In other words, any future increases Pennsylvania-American must charge for its collection service will be subject to Commission scrutiny – *i.e.*, must be just and reasonable. Thus, with the reality that Brentwood rates will increase regardless of ownership, the purported “harm” of Pennsylvania-American’s modest estimated rate increase to Brentwood customers that may occur is actually mitigated considering that, if Brentwood retains ownership of the System, any future rate increase by Brentwood would not be subject to Commission oversight or approval.

An increase in rates would not just be needed to address ongoing and future capital and environmental issues. As Mr. Kubas, I&E’s witness, testified, any additional funding needed by Brentwood for it to even have a chance of coming close to the level of service and expertise provided by Pennsylvania-American in the absence of the Proposed Transaction would result in a rate increase. *See, e.g.*, Transcript of Evidentiary Hearing, November 14, 2023, pp. 334:8–335:24, 336:25–337:10. Brentwood made the determination that the System’s critical needs were far better addressed by Pennsylvania-American, and that benefit (and the other benefits discussed above) far outweighed any potential harm by way of rate impact (the only harm identified in this proceeding). Through Mr. Kubas, I&E acknowledges that for Brentwood to recognize those same benefits, if even attainable, in the absence of the Proposed Transaction, it would need to impose the exact same harm.

It is truly mind-boggling for I&E to make this argument, which implicates a number of important points. First, the Borough is unquestionably not in the same position now as it would be if the Proposed Transaction is approved, nor would it be going forward without a massive infusion of money, which would be obtained through rate increases. Brentwood is struggling to

maintain the System, and Pennsylvania-American would not. Second, the record simply does not support the preposterous notion that Brentwood could *ever*, through any amount of cash infusion, obtain the same level of expertise and provide the same level of service as Pennsylvania-American. For Mr. Kubas to even advance this notion calls his credibility and the entirety of his testimony into question. There is no basis to even speculate that the Borough (or any comparable municipality in Pennsylvania) could do this. Third, the fact that I&E concedes that Brentwood would need to raise rates in order to (theoretically) place it in a comparable position as it would be if the Proposed Transaction is approved underscores that the only harm being asserted by the Statutory Advocates – *i.e.*, the raising of rates – should be afforded little, if any, weight. The record makes clear that rates will increase regardless of whether the Proposed Transaction is approved without even accounting for rate increases needed for the Borough to realize the service, expertise, and overall operational benefits that the Proposed Transaction would otherwise provide.

The fact that the Proposed Transaction provides for such benefits specifically under the circumstances presented, with the Borough struggling to even be reactive to concerns and needed capital improvements, is significant and should be afforded considerable weight, even in light of the rate increases that are posited as the only harm in the record. Moreover, the fact that the denial of the Proposed Transaction would have the effect of raising rates without any real guarantee that the same benefits could be realized leads to the only conclusion possible: that the Proposed Transaction will provide benefits, with certainty, that far outweigh any harm, whereas its denial will result in the same supposed harm but without any the realization of those benefits being guaranteed (if even plausible).

Accordingly, the Borough respectfully submits that the Proposed Transaction strikes a balance to achieve the goal of ensuring public safety and welfare without placing customers at risk

for significant, unreasonably rate increases. Simply put, the benefits provided by the Proposed Transaction outweigh the inevitable rate impact that will occur regardless of its approval.

d. Conclusion

As illustrated above, there is no dispute that Pennsylvania-American has the requisite technical, legal, and financial fitness to own and operate the System. Similarly, the Proposed Transaction will provide a substantial public benefit to the System, the acquired Brentwood customers, and the ALCOSAN region at large. Accordingly, Brentwood respectfully submit that the Proposed Transaction should be approved.

B. Section 1329 Issues

1. Fair Market Value for Ratemaking Purposes

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief related to the fair market value of Brentwood's System for ratemaking purposes.

2. Tariff and Rates

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief related to Pennsylvania-American's *pro forma* tariff and rates.

3. DSIC

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief related to distribution system improvement charges.

4. Claims for AFUDC and Deferred Depreciation

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief related to claims for allowance for funds used during construction and deferred depreciation.

5. Transaction and Closing Costs

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief related to transaction and closing costs.

6. Additional Issues

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief related to the additional issues of this Proposed Transaction.

- a. Plant in Service Used to Serve “Non-Customers”**
- b. Is the Rate Freeze a Rate Stabilization Plan?**
- c. Should Future Customer Notices Show a Range of Impacts?**

C. Section 507 Issues

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief relating to section 507 approvals.

D. Preservation of the Z Agreement and other Z Agreements

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief relating to preservation of the Z Agreement and other Z Agreements.

E. Recommended Conditions for Approval

Brentwood endorses, adopts and incorporates by reference the section of Pennsylvania-American's Main Brief relating to conditions for approval.

- 1. Missing Easements and Other Property Rights**
- 2. Cost of Service Studies**
- 3. Rate Freeze**
- 4. Customer Notices**

5. ALCOSAN charges and discounts

It is important to highlight that the Proposed Transaction will provide Brentwood customers with an improved, more streamlined billing process.

Currently, Brentwood acts as a billing agent for ALCOSAN. *See* Brentwood Statement No. 1-R, p. 13; *see also* Z Agreement, ¶ 16. Simply put, rather than ALCOSAN directly billing Brentwood customers for the treatment service (which would require customers to keep track of yet another bill to pay), the Borough includes the ALCOSAN charges on Brentwood's bills for collection service and Brentwood remits payment to ALCOSAN on a quarterly basis. *See* Z Agreement, ¶ 16. Thus, in exchange for this service, Brentwood receives an annual credit from ALCOSAN in the approximate amount that ALCOSAN saves in billing expenses each year pursuant to the Z Agreement. *See id.* Pennsylvania-American has agreed to assume this obligation under the Cooperation Agreement. *See* the Cooperation Agreement, ¶ 2.g.

Accordingly, under the Proposed Transaction, Brentwood customers will not only continue to enjoy consolidated billing service for wastewater, but Brentwood customers will also have one bill for both water and wastewater services as Pennsylvania-American also provides water service to the Borough customers. *See* Brentwood Statement No. 1, p. 15. Brentwood respectfully submits that such consolidated billing is in the best interests of its residents to avoid confusion and limit the number of utility bills that they receive.

6. Specific Notice for Brentwood customers prior to closing

7. Payment agent in Brentwood

V. CONCLUSION OF REQUESTED RELIEF

For all the reasons set forth herein, as well as the reasons set forth in Pennsylvania-American's Main Brief, the Borough respectfully requests that the Commission approve of the Application and grant Pennsylvania-American's requested relief.

Respectfully submitted,

/s/ Matthew S. Olesh

Matthew S. Olesh, Esquire (PA I.D. 206553)
Sydney N. Melillo, Esquire (PA I.D. 328031)
Thomas Wyatt, Esquire (PA I.D. 89342)
Obermayer Rebmann Maxwell & Hippel LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102

Thomas.Wyatt@obermayer.com

Matthew.Olesh@obermayer.com

Sydney.Melillo@obermayer.com

Counsel for the Borough of Brentwood

Appendix A – List of the Borough of Brentwood Sponsored Testimony and Exhibits

1. Direct Testimony of George Zboyovsky, Brentwood St. No. 1 and a verification.
2. Rebuttal Testimony of George Zboyovsky, Brentwood St. No. 1-R and a verification.
3. Direct Testimony of Harold Walker, III, Brentwood St. No. 2, together with Exhibit HW-1 and a verification.

Appendix B – Proposed Findings of Fact

Brentwood endorses, adopts and incorporates by reference the proposed findings of fact submitted by Pennsylvania-American.

Appendix C – Proposed Conclusions of Law

Brentwood endorses, adopts and incorporates by reference the proposed conclusions of law submitted by Pennsylvania-American.

Appendix D – Proposed Ordering Paragraph

Brentwood endorses, adopts and incorporates by reference the proposed ordering paragraphs submitted by Pennsylvania-American.