

November 30, 2023

VIA EFILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17101

**Re: Application of Pennsylvania-American Water 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 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
Docket No. A-2021-3024058**

Dear Secretary Chiavetta:

Please find enclosed for filing the Main Brief of Intervenor Allegheny County Sanitary Authority. If you have any questions or concerns, please feel free to contact me at the address listed above.

Very Truly Yours,

SALZMANN HUGHES, P.C.

/s/ Scott T. Wyland
Scott T. Wyland

Enclosure

cc: The Honorable Katrina L. Dunderdale (via email to: kdunderdal@pa.gov and first-class mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
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 Borough of :
Brentwood’s assets, properties and rights related to its : Docket No. A-2021-3024058
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 :

MAIN BRIEF OF INTERVENOR ALLEGHENY COUNTY SANITARY AUTHORITY

TABLE OF CONTENTS

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

 A. Procedural History.....1

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

II. BURDEN OF PROOF.....5

III. SUMMARY OF ARGUMENT.....5

IV. ARGUMENT.....7

 A. Section 1102 AND 1103 Issues.....7

 1. Fitness.....7

 2. Substantial public benefits test.....7

 B. Section 1329 Issues.....10

 1. Fair Market Value for Ratemaking Purposes.....10

 2. Tariff and Rates.....10

 3. DSIC.....12

 4. Claims for AFUDC and Deferred Depreciations.....12

 5. Transaction and Closing Costs.....13

 6. Additional Issues.....13

 a. Plant in Service Used to Serve “Non-Customers”.....13

 b. Is the Rate Freeze a Rate Stabilization Plan?.....13

 c. Should Future Customer Notices Show a Range of Impacts?.....13

 C. Section 507 Issues.....13

 D. Preservation of the Z Agreement and other Z Agreements.....14

 E. Recommended Conditions for Approval.....19

1.	Missing Easements and Other Property Rights.....	19
2.	Cost of Service Studies.....	19
3.	Rate Freeze.....	19
4.	Customer Notices.....	19
5.	ALCOSAN charges and discounts.....	19
6.	Specific Notice for Brentwood customers prior to closing.....	20
7.	Payment agent in Brentwood.....	20
V.	CONCLUSION AND REQUEST FOR RELIEF.....	20
	Appendix A: List of ALCOSAN Sponsored Testimony and Exhibits.....	22
	Appendix B: Proposed Findings of Fact.....	23
	Appendix C: Proposed Conclusions of Law.....	26
	Appendix D: Proposed Ordering Paragraphs.....	27

TABLE OF AUTHORITIES

Cases

Elizabeth Twp. v. Mun. Auth. of McKeesport, 447 A.2d 245 (Pa. 1982)..... 11
Graver v. Pa. PUC, 469 A.2d 1154 (Pa. Cmwlth. 1984) 11
McCloskey v. Pennsylvania Pub. Util. Comm’n, 195 A.3d 1055 (Pa. Cmwlth. 2018)..... 7
Popowsky v. Pennsylvania Pub. Util. Comm’n, 937 A.2d 1040 (Pa. 2007) 7, 8
Rankin v. Chester Municipal Authority, 68 A.2d 458 (Pa. Super. 1949)..... 11
Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n, 578 A.2d 600 (Pa.Cmwlth. 1990) 5
Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950)..... 5

Statutes

66 Pa. C.S. § 1329..... 4
66 Pa. C.S. § 507..... 4
66 Pa. C.S. §1102..... 4
66 Pa.C.S. § 332..... 5
66 Pa.C.S.A. § 1103..... 5, 7

Other Authorities

Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny, Pa. PUC
Docket No. C-2021-3023624 (Opinion and Order entered November 1, 2023)..... 11

I. STATEMENT OF THE CASE

A. Procedural History

On March 31, 2023, Pennsylvania-American Water Company (“PAWC”) filed an application for the Pennsylvania Public Utility Commission’s (“Commission”) approval to acquire substantially all of the assets, properties and rights related to the wastewater collection system owned by the Borough of Brentwood (“Brentwood”) as follows: (1) the transfer, by sale, of substantially all of Brentwood’s assets, properties and rights related to its wastewater collection and conveyance system to PAWC, and (2) the rights of PAWC to begin to offer or furnish wastewater service to the public in Brentwood (the “Application”). PAWC filed Amendments to the Application on May 31, 2023, and July 6, 2023 (the Application and Amendments are referred to collectively as the “Application”). Through this Application, PAWC seeks approval of, *inter alia*, the Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood, as Seller, and PAWC, as Buyer, dated as of December 22, 2020, and amended on March 2, 2023 (collectively the “APA”).

Following PAWC and Brentwood originally executing the APA on December 22, 2020, ALCOSAN had multiple meetings and discussions with Brentwood and PAWC regarding the potential sale, which led to the execution of the Cooperation and Allocation of Responsibilities Agreement between Brentwood and PAWC dated March 2, 2023 (the “Cooperation Agreement”). PAWC’s Application also seeks the Commission’s approval of the Cooperation Agreement. As set forth in the Cooperation Agreement, ALCOSAN, the City of Pittsburgh (“Pittsburgh”), and Brentwood are parties to The Pittsburgh Zone Project Agreement of December 1, 1949 (the “Z Agreement”). Pursuant to the Z Agreement, ALCOSAN is designated as the “Sewage Agency,” and serves as the exclusive provider for sanitary sewage disposal and treatment for Brentwood,

Pittsburgh, and the other 81 customer municipalities within the ALCOSAN service area.

The Z Agreement serves as the foundational document for ALCOSAN's entire service area and defines the relationship between and among ALCOSAN, Pittsburgh, and Brentwood. To finance, construct, and maintain its sewage disposal system, ALCOSAN has agreements identical to the Z Agreement with each of its original customer municipalities and agreements substantially similar to the Z Agreement with subsequent customer municipalities, under which ALCOSAN is universally designated as their sole and exclusive provider for sanitary sewage disposal and treatment (collectively referred to herein as the "Other Z Agreements"). Further, the Z Agreement is necessary for ALCOSAN to meet its obligations under the Modified Consent Decree entered into among ALCOSAN, the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Allegheny County Health Department, including implementation of the four key areas of ALCOSAN's Clean Water Plan: (1) expanding the wastewater treatment plant, (2) preventing excess water from entering the sewer system by making investments in sewer improvements through the Green Revitalization of Our Waterways ("GROW") grant program, (3) increasing adaptive management and conveyance capacity through the addition of pipes, diversion structures, and tunnels, and (4) regionalizing multi-municipal sewers by ALCOSAN making a good faith effort to assume ownership of 200 miles of sewer infrastructure (the "Regionalization Program"). Brentwood's wastewater collection system includes two multi-municipal trunklines eligible for voluntary transfer to ALCOSAN under the Regionalization Program. Brentwood and PAWC have declined to transfer these trunklines to ALCOSAN and have elected not to participate in the Regionalization Program.

The Cooperation Agreement sets forth the agreements regarding ALCOSAN, the Modified Consent Decree, and the obligations, rights, payment, billing, and other terms of the Z Agreement

related to the APA and PAWC's acquisition of Brentwood's wastewater collection system. ALCOSAN is a third-party beneficiary of the Cooperation Agreement and therefore has the rights to enforce PAWC and Brentwood's respective covenants and obligations set forth in the Cooperation Agreement.

The Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement on April 7, 2023. The Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance on May 12, 2023. The Office of Consumer Advocate ("OCA") filed a Protest and Public Statement on May 4, 2023.

By Secretarial Letter dated September 14, 2023, the Commission notified PAWC that it accepted PAWC's Application for filing. The deadline to file protests and petitions to intervene was set for October 16, 2023. On October 2, 2023, Brentwood filed a Petition to Intervene. On October 11, 2023, ALCOSAN filed a Petition to Intervene to, *inter alia*, protect its interests under its various municipal customer agreements and to inform the Commission about ALCOSAN's history and unique structure as a municipal authority. An Initial Prehearing Telephonic Conference took place on October 17, 2023. ALCOSAN and Brentwood were granted Intervenor status by Prehearing Order # 1. Prehearing Order # 1 also set forth the litigation schedule.

The parties exchanged discovery and testimony. ALCOSAN, for its part, submitted the Direct Testimony and Exhibit of Douglas Jackson, P.E., the Deputy Executive Director and Director of Operations & Maintenance for ALCOSAN. Public input hearings were held in the afternoon and evening of October 26, 2023. Because no party sought to cross-examine ALCOSAN's witness Mr. Jackson, Mr. Jackson was excused from the evidentiary hearings. Accordingly, ALCOSAN re-submitted the Direct Testimony and Exhibit of Douglas Jackson, P.E., that was previously submitted on behalf of ALCOSAN on October 24, 2023, now with Mr.

Jackson's signed verification for admission into the record.

Evidentiary hearings were held on November 8, 2023, and November 14, 2023, during which ALCOSAN and the other parties admitted their testimony and exhibits thereto into the record. The record was closed on November 17, 2023. ALCOSAN now files its Main Brief.

B. Overview of the Proposed Transaction

PAWC's Application seeks to obtain Commission approval in the form of a Certificate of Public Convenience to acquire Brentwood's wastewater collection and conveyance system (the "System") and to furnish wastewater service to the public in Brentwood pursuant to 66 Pa. C.S. §1102(a). Application at ¶ 1. PAWC also requests Commission approval pursuant to 66 Pa. C.S. § 1329 related to valuation of the acquisition. Application at ¶ 2.

Further, PAWC requests Commission approval of certain agreements with municipal corporations pursuant to 66 Pa. C.S. § 507. Relevant to ALCOSAN, the agreements that PAWC requests the Commission approve include the APA, attached to the Application as Appendix A-24-a¹, and the Cooperation Agreement, attached to the Application as Appendix A-25.3. Application at ¶ 3. As explained in PAWC's Application, the Z Agreement is not and cannot be directly assigned to PAWC. Rather the Cooperation Agreement sets forth the rights and obligations under the Z Agreement that will be allocated to PAWC by Brentwood at closing if the proposed transaction is approved. Accordingly, PAWC is also requesting the Commission approve the Cooperation Agreement. Application at ¶ 44; PAWC Statement No. 1, p. 8, lines 20-23 and p. 9, lines 1-1.

PAWC also requests the Commission's approval of a *pro forma* tariff supplement contained in the Second Amended Appendix A-12. Under PAWC's proposed tariff, upon

¹ The version of the APA attached as Exhibit J to the Application was a prior version of the APA. The APA attached as Exhibit A-24a is the correct version of the APA. Tr. at p. 315.

PAWC's acquisition of the System, ALCOSAN will continue to independently determine its rates for treatment services to users located in Brentwood without Commission oversight and "PAWC will bill customers the treatment charges at the rates determined by ALCOSAN." PAWC Statement No. 3, P. 7, lines 16-22; Second Amended Appendix A-12 at Revised Page 11.13.

II. BURDEN OF PROOF

As the proponent of its Application, PAWC has the burden of proof to establish that it is entitled to the relief it is seeking in this proceeding. 66 Pa.C.S. § 332(a). PAWC must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, PAWC must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

III. SUMMARY OF ARGUMENT

Section 1103(a) of the Public Utility Code requires the Commission to find and determine that a proposed transaction provides an affirmative public benefit. 66 Pa.C.S. § 1103(a). Importantly, in approving the proposed transaction, the Commission has discretion to impose just and reasonable conditions with such approval. *Id.*

ALCOSAN has made clear throughout these proceedings that it does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application. ALCOSAN intervened in these proceedings and submits this Main Brief to ensure that, in the event the Application is approved: (1) ALCOSAN's status as the sole and exclusive provider of sewage treatment within its service area is preserved, (2) the uniformity of the Z Agreement and the Other Z Agreements is maintained, (3) ALCOSAN can continue to meet its obligations under the Modified Consent Decree and trust indentures, and (4) ALCOSAN remains

an independent municipal authority not subject to Commission oversight.

For those purposes, ALCOSAN presented record evidence establishing the essential role of the Z Agreement and, if the Application is approved, the need for preserving (and not assigning or revising) the Z Agreement and the Other Z Agreements. ALCOSAN also presented record evidence establishing the importance of the Cooperation Agreement to ensure the continued enforcement of the Z Agreement and the Other Z Agreements consistent with past practice upon PAWC acquiring Brentwood's System, including setting forth the relative rights and obligations of PAWC and Brentwood with respect to the Z Agreement, in the event the Application is approved, which, in turn enables ALCOSAN to comply with the Modified Consent Decree and to honor its trust and bond obligations. The record evidence shows that, if the Application is approved, the preservation and on-going uniform enforcement of the Z Agreement and the Other Z Agreements is no doubt in the public interest.

Based on that record evidence, ALCOSAN submits that, in the event the Application is approved, the Commission should also approve the Cooperation Agreement without any modifications thereto; and, further, that the Commission should condition approval of the Application on each of the following requirements:

1. The Pittsburgh Zone Project Agreement of December 1, 1949 ("Z Agreement") shall not be amended or assigned;
2. Brentwood shall honor its obligations under the terms of the Z Agreement, including, but not limited to, fulling its obligations with respect to payments due to ALCOSAN;
3. The Cooperation Agreement shall not be amended; and
4. PAWC and Brentwood shall honor their obligations under the terms of the Cooperation Agreement, including, but not limited to, fulling their obligations with respect to payments due to ALCOSAN.

IV. ARGUMENT

A. Section 1102 and 1103 Issues

1. Fitness

ALCOSAN takes no position either in support of or in opposition to the proposed transaction that is the subject of the Application and therefore ALCOSAN takes no position regarding PAWC's fitness.

2. Substantial public benefits test

Pursuant to Section 1103(a) of the Public Utility Code, the Commission shall grant a certificate of public convenience "only if the [C]ommission 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.A. § 1103(a). In determining whether to approve a proposed transaction, the Commission must find and determine that the proposed transaction provides an affirmative public benefit by employing "the balancing test required by Section 1102 of the Code [and] weigh[ing] all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit." *McCloskey v. Pennsylvania Pub. Util. Comm'n*, 195 A.3d 1055, 1067 (Pa. Cmwlth. 2018).

In granting a certificate of public convenience, Section 1103(a) of the Public Utility Code authorizes the Commission to "impose such conditions as it may deem to be just and reasonable." 66 Pa.C.S. § 1103(a). As explained by the Pennsylvania Supreme Court, "while in some circumstances conditions may be necessary to satisfy the Commission that public benefit sufficient to meet the requirement of Section 1103(a) will ensue, even where the [Commission] finds benefit in the first instance, Section 1103(a) also confers discretion upon the [Commission] to impose conditions which it deems to be just and reasonable." *Popowsky v. Pennsylvania Pub. Util.*

Comm'n, 937 A.2d 1040, 1057 (Pa. 2007).

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application; however, should the Commission decide to approve the Application, the undisputed record evidence establishes that there is an affirmative public benefit to the Commission also approving the Cooperation Agreement between PAWC and Brentwood.

Simply put, as explained by the unrebutted testimony of ALCOSAN's witness Mr. Jackson, should the Commission approve the Application, the Cooperation Agreement is necessary for ALCOSAN to continue to be able to provide its integral and exclusive wastewater treatment and conveyance services to its 83 municipal customers, including for users located in Brentwood. ALCOSAN St. No. 1, p. 9, lines 15-33 and p. 10, lines 1-2. That is because the Cooperation Agreement ensures the preservation and ongoing enforcement of the terms of the Z Agreement and the Other Z Agreements consistent with past practice upon PAWC acquiring Brentwood's System, including setting forth the relative rights and obligations of PAWC and Brentwood with respect to the Z Agreement, which, in turn, ensures ALCOSAN's ability to comply with the Modified Consent Decree. The Z Agreement and the Other Z Agreements are essential for ALCOSAN to be able to provide its wastewater treatment and conveyance services within its service area. ALCOSAN St. No. 1, p. 8, lines 13-14; PAWC Statement No. 1, p. 8, lines 22-23 and p. 9, lines 1-2; Appendix A-25.3.

As further detailed in Section IV.D. below, the Z Agreement serves as the foundational document for ALCOSAN's entire service area and defines the relationship between and among ALCOSAN, Pittsburgh, and Brentwood. ALCOSAN St. No. 1, p. 8, lines 7-9. In exchange for ALCOSAN's services, and for ALCOSAN to be able to continue to provide its services, the Z

Agreement imposes certain obligations upon Brentwood, including, but not limited to, rates, billing, payment, and collection arrangements. ALCOSAN St. No. 1, p. 8, lines 9-11. The Z Agreement and the Other Z Agreements also authorize and are necessary for ALCOSAN to continue to meet its obligations under bond and trust indentures for financing past and future improvements to its system and other costs associated with ALCOSAN's services and operations, including by establishing and raising rates as necessary. ALCOSAN St. No. 1, p. 8, lines 14-18.

Additionally, the Z Agreement and the Other Z Agreements are the foundation upon which ALCOSAN's Clean Water Plan and Regionalization Program are based and are, therefore, essential for ALCOSAN to meet its obligations under the Modified Consent Decree. ALCOSAN St. No. 1, p. 8, lines 18-20. Accordingly, in order for ALCOSAN to continue to provide its wastewater treatment and conveyance services and meet all obligations related to the same, the terms of the Z Agreement and the Other Z Agreements must remain unchanged and continue to be uniformly and consistently interpreted and implemented. ALCOSAN St. No. 1, p. 8, lines 20-23.

No party has presented any evidence or argument disputing ALCOSAN's continued essential role as the exclusive service provider for sanitary sewage conveyance and treatment in its service territory if the Commission approves the proposed transaction. Likewise, no party has presented any evidence or argument to dispute the essential role of the Z Agreement and the Other Z Agreements and the need for preserving and not amending these agreements. Indeed, PAWC and Brentwood agree that, in the event of PAWC's acquisition, the Z Agreement must remain in place among the original parties and cannot be directly assigned to PAWC. ALCOSAN St. No. 1, p. 9, lines 8-10; Application at ¶ 44; PAWC Statement No. 1, p. 8, lines 20-23 and p. 9, lines 1-1.

PAWC and Brentwood entered into the Cooperation Agreement to ensure that the Z Agreement and the Other Z Agreements would not be compromised and would continue to be

uniform in the event of PAWC’s acquisition of Brentwood’s System. Tr. at p. 133; ALCOSAN St. No. 1, p. 9, lines 15-18. ALCOSAN is a third-party beneficiary of the Cooperation Agreement “with rights to enforce the respective covenants and obligations of PAWC and [Brentwood] as set forth in this Agreement.” Application at Appendix A-25.3, Section 10. Under the Cooperation Agreement, Brentwood and PAWC expressly acknowledge the essential role of the Z Agreement and the Other Z Agreements for ALCOSAN to be able to continue to serve the sewage conveyance and treatment needs of its municipal customers. Application at Appendix A-25.3, Section 2.a.(ii). The terms of the Cooperation Agreement also require PAWC and Brentwood to support the ongoing implementation and adherence to the Z Agreement and not undermine the Z Agreement or the Other Z Agreements. Application at Appendix A-25.3, Section 2.a.(ii).

B. Section 1329 Issues

1. Fair Market Value for Ratemaking Purposes

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application and therefore does not have a position on the fair market valuation process under Section 1329.

2. Tariff and Rates

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction. In the event that the proposed transaction is approved, however, ALCOSAN must ensure that, as a Pennsylvania municipal authority, it is empowered to continue to set its sewer rates and charges without Commission oversight, and that ALCOSAN is paid in full for its services.

It is undisputed that ALCOSAN is a Pennsylvania joint municipal authority organized under and governed by the Municipality Authorities Act, as amended, 53 Pa. C.S.A. §§ 5601-5623.

ALCOSAN St. No. 1, p. 2, lines 8-11; Brentwood St. No. 1-R, p. 13, lines 9-10; PAWC St. No. 3-R, p. 6, lines 15-17; Tr. at p. 211, 224-225, 398, 408. As consistently held by Pennsylvania Courts and recently re-affirmed by this Commission, the Commission has no jurisdiction over municipal authorities, including their rates and services. *See Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982); *Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984); *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Pa. PUC Docket No. C-2021-3023624 (Opinion and Order entered November 1, 2023). Consistent with this well-established precedent, it is also undisputed in this case that, because ALCOSAN is a municipal authority, the Commission has no jurisdiction over ALCOSAN, including jurisdiction over ALCOSAN's rates and charges for its sewage treatment services. PAWC St. No. 3-R, p. 6, lines 15-17; Tr. at p. 195, 225, Tr. at p. 398. It is further not in dispute that ALCOSAN's rates and charges are not at issue in this proceeding. Tr. at p. 400-401.

Other parties have raised issues regarding whether Brentwood customers should bear the full cost of ALCOSAN's service charges upon PAWC's acquisition of the System. ALCOSAN takes no position on those issues. Importantly for ALCOSAN's interests, no party has disputed that in the event of PAWC's acquisition ALCOSAN must and will be able to continue to determine its rates for its sewer services to users located in Brentwood. Nor has any party disputed PAWC's obligation to pay ALCOSAN in full for such services to Brentwood users at the rates set by ALCOSAN. As confirmed by the rebuttal testimony of PAWC witness Ashley E. Everette, upon PAWC acquisition of the System, "PAWC would be obligated to pay ALCOSAN for sewer treatment at the rates determined by ALCOSAN." PAWC Statement No. 3, P. 7, lines 15-22.

As explained by the unchallenged testimony of ALCOSAN witness Mr. Jackson, if the

Application is approved, it is imperative that ALCOSAN continue to be able to establish and enforce its rate structure as authorized under Pennsylvania law to be able to continue to provide its wastewater treatment and conveyance services. ALCOSAN St. No. 1, p. 2, lines 8-11 and p. 8, lines 14-23. Further, ALCOSAN is a fully ratepayer funded authority and therefore must ensure that, if the Application is approved, it will continue to be paid for its services provided to users located in Brentwood. ALCOSAN St. No. 1, p. 11, lines 8-14.

Under PAWC's proposed tariff, upon PAWC's acquisition of the System, ALCOSAN will continue to determine its rates for treatment services to users located in Brentwood. Statement No. 3, P. 7, lines 16-22; Second Amended Appendix A-12 at Revised Page 11.13. Accordingly, if the Application is approved, ALCOSAN agrees that PAWC's proposal for ALCOSAN to continue to determine its rates for conveyance and treatment services to users located in Brentwood without Commission oversight is correct, necessary to enable ALCOSAN to continue to provide its services, and consistent with well-established Pennsylvania law.

3. DSIC

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application and therefore does not have a position regarding PAWC's request to collection a distribution system improvement charge ("DSIC").

4. Claims for AFUDC and Deferred Depreciation

ALCOSAN takes no position either in opposition to or in support of the proposed transaction that is the subject of the Application and therefore does not have a position on PAWC's requests regarding Allowance for Funds Used During Construction ("AFUDC") and deferral of depreciation.

5. Transaction and Closing Costs

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction. ALCOSAN, therefore, has no position on PAWC's transaction and closing costs related to the proposed transaction.

6. Additional Issues

a. Plant in Service Used to Serve "Non-Customers"

ALCOSAN does not take a position either in opposition to or in support of the Application and, therefore, takes no position regarding this issue.

b. Is the Rate Freeze a Rate Stabilization Plan?

ALCOSAN does not take a position either in opposition to or in support of the Application and, therefore, takes no position as to whether PAWC's proposed rate freeze is, or is not, a rate stabilization plan.

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

ALCOSAN takes no position either in support of or in opposition to the Application and has no position on this issue.

C. Section 507 Issues

As part of its Application, PAWC requests the Commission's approval of the Cooperation Agreement, which is attached to the Application as Appendix A-25.3. Application at ¶ 3. Again, ALCOSAN takes no position on the proposed transaction. However, as detailed in Section IV.B.2. above, if the Commission approves the proposed transaction, the record evidence demonstrates a substantial public benefit for approving the Cooperation Agreement as part of the transaction, including benefits to Brentwood users and all users within ALCOSAN's service territory. Without the Cooperation Agreement, ALCOSAN cannot ensure its ability to continue to provide its integral

and exclusive wastewater treatment and conveyance services to its 83 municipal customers, including users located in Brentwood. ALCOSAN St. No. 1, p. 9, lines 15-33 and p. 10, lines 1-2.

D. Preservation of the Z Agreement and Other Z Agreements

As explained by the testimony of ALCOSAN's witness Mr. Jackson, ALCOSAN does not take a position either in opposition to or in support of PAWC's proposed transaction to acquire Brentwood's System. ALCOSAN St. No. 1, p. 4, lines 17-19. As detailed below, Mr. Jackson's unchallenged and unrebutted testimony establishes that, should the Commission approve the Application, the Z Agreement and the Other Z Agreements must be preserved and remain enforceable and unchanged for ALCOSAN to ensure that it maintains its status and rights as the exclusive provider of wastewater treatment and conveyance services in its service area and can continue to meet all obligations related to the same. In addition, Mr. Jackson's undisputed testimony demonstrates that, because the Cooperation Agreement ensures the preservation, enforceability, and uniformity of the Z Agreement and the Other Z Agreements upon PAWC's acquisition of the System, the Commission must approve the Cooperation Agreement as part of the transaction. ALCOSAN St. No. 1, p. 4, lines 19-23, p. 8, lines 1-23, p. 9, lines 15-22 and p. 10, lines 1-2.

Specifically, as explained by Mr. Jackson, under the Z Agreement, ALCOSAN has been designated as the sole and exclusive provider of wastewater treatment and conveyance services to 83 municipalities in the Commonwealth of Pennsylvania, including Pittsburgh and Brentwood. ALCOSAN St. No. 1, p. 2, lines 11-17. ALCOSAN has been providing wastewater treatment and conveyance services since 1959 with a current service area extending over 310 square miles and nearly 900,000 individuals relying on its wastewater treatment and conveyance services.

ALCOSAN St. No. 1, p. 2, lines 11-22 and p. 3, lines 3-4.

To finance, construct, operate, and maintain its wastewater treatment and conveyance system, ALCOSAN has entered into the Other Z Agreements, that is, agreements identical to the Z Agreement with each of its original customer municipalities and agreements substantially similar to the Z Agreement with subsequent customer municipalities, under which ALCOSAN is also designated as their sole and exclusive provider for wastewater treatment and conveyance services.

ALCOSAN St. No. 1, p. 3, lines 6-11.

To provide its wastewater treatment and conveyance services, ALCOSAN holds a National Pollutant Discharge Elimination System (“NPDES”) Permit, NPDES Permit No. PA0025984. Under its NPDES Permit, ALCOSAN is authorized to discharge treated sewage and industrial wastewater from its treatment plant to the Ohio River in accordance with the requirements set forth in the NPDES Permit. ALCOSAN St. No. 1, p. 5, lines 21-22 and p. 6, lines 1-2. Additionally, ALCOSAN is subject to a Modified Consent Decree entered into between and among ALCOSAN, the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Allegheny County Health Department. ALCOSAN St. No. 1, p. 6, lines 4-10. The purpose of the Modified Consent Decree is to ensure that ALCOSAN complies with its NPDES Permit and all applicable federal and state law related to its wastewater treatment and conveyance system and services. ALCOSAN St. No. 1, p. 6, lines 10-14.

Notably, the Modified Consent Decree approved and requires ALCOSAN to implement ALCOSAN’s Clean Water Plan. ALCOSAN St. No. 1, p. 6, lines 8-10. The Clean Water Plan is a \$3.6 billion long-term plan that will significantly reduce combined sewage overflow within ALCOSAN’s service area by 7 billion gallons annually as well as eliminate sanitary sewage overflows to the maximum extent practicable. ALCOSAN St. No. 1, p. 6, lines 16-18.

The Clean Water Plan consists of the following four key components: (1) expanding ALCOSAN's wastewater treatment plant to help reduce sewage overflows caused by excess stormwater; (2) preventing excess water from entering the sewer system by making investments in sewer improvements through the Green Revitalization of Our Waterways ("GROW") grant program; (3) increasing adaptive management and conveyance capacity through the construction of a new regional tunnel system and related infrastructure; and (4) regionalizing multi-municipal sewers to create a streamlined collection system by ALCOSAN making a good faith effort to assume ownership of 200 miles of trunk sewers and related infrastructure of its municipal customers (the "Regionalization Program"). ALCOSAN St. No. 1, p. 6, lines 18-23, and p. 7, lines 1-4.

Brentwood receives wastewater treatment and conveyance services from ALCOSAN pursuant to the Z Agreement and, therefore, is required to comply with the Modified Consent Decree obligations of reducing sewage overflows within its wastewater collection system. ALCOSAN St. No. 1, p. 7, lines 12-14. To meet those obligations, Brentwood entered into a Consent Order and Agreement (the "COA") with the Allegheny County Health Department. ALCOSAN St. No. 1, p. 7, lines 14-15. Under the COA, Brentwood must perform certain corrective actions to reduce its sewage overflows. ALCOSAN St. No. 1, p. 7, lines 14-16. The COA also requires Brentwood to cooperate with ALCOSAN and ALCOSAN's other municipal customers to implement ALCOSAN's Clean Water Plan. ALCOSAN St. No. 1, p. 7, lines 14-17.

The Z Agreement and the Other Z Agreements are essential for ALCOSAN to be able to provide its wastewater treatment and conveyance services within its service area. ALCOSAN St. No. 1, p. 8, lines 13-14. The Z Agreement and the Other Z Agreements establish ALCOSAN's service area. ALCOSAN St. No. 1, p. 8, lines 6-7. The Z Agreement serves as the foundational

document for ALCOSAN's entire service area and defines the relationship between and among ALCOSAN, Pittsburgh, and Brentwood. ALCOSAN St. No. 1, p. 8, lines 7-9. In exchange for ALCOSAN's services, and for ALCOSAN to be able to continue to provide its services, the Z Agreement imposes certain obligations upon Brentwood, including, but not limited to, rates, billing, payment, and collection arrangements. ALCOSAN St. No. 1, p. 8, lines 9-11. The Z Agreement and the Other Z Agreements also authorize and are necessary for ALCOSAN to continue to meet its obligations under bond and trust indentures for financing past and future improvements to its system and other costs associated with ALCOSAN's services and operations, including by establishing and raising rates as necessary. ALCOSAN St. No. 1, p. 8, lines 14-18. Additionally, the Z Agreement and the Other Z Agreements are the foundation upon which ALCOSAN's Clean Water Plan and Regionalization Program are based and are, therefore, essential for ALCOSAN to meet its obligations under the Modified Consent Decree. ALCOSAN St. No. 1, p. 8, lines 18-20. Accordingly, in order for ALCOSAN to continue to provide its wastewater treatment and conveyance services and meet all obligations related to the same, the terms of the Z Agreement and the Other Z Agreements must remain unchanged and continue to be uniformly and consistently interpreted and implemented. ALCOSAN St. No. 1, p. 8, lines 20-23.

If the Commission approves the proposed transaction, the Cooperation Agreement is necessary to ensure the continued preservation and enforcement of the terms of the Z Agreement and the Other Z Agreements, including, but not limited to, establishing PAWC and Brentwood's rights and obligations under the Z Agreement and the Modified Consent Decree. ALCOSAN St. No. 1, p. 9, lines 15-20. By ensuring the preservation and enforcement of the Z Agreement and the Other Z Agreements, the Cooperation Agreement is necessary, if the proposed transaction is approved, for ALCOSAN to preserve its status as the exclusive wastewater treatment and

conveyance provider within its service area, which in turn preserves its ability to continue to meet its obligations under the Modified Consent Decree and bond and trust indentures. ALCOSAN St. No. 1, p. 9, lines 20-22 and p. 10, lines 1-2.

No party has presented any evidence or argument disputing ALCOSAN's continued essential role as the sole and exclusive provider for sanitary sewage disposal and treatment in its service territory if the Commission approves the proposed transaction. Nor has any party presented any evidence or argument to dispute the essential role of the Z Agreement and the Other Z Agreements and the need for preserving and not amending these agreements. Instead, PAWC and Brentwood agree that, in the event of PAWC's acquisition, the Z Agreement must remain in place among the original parties and cannot be directly assigned to PAWC. ALCOSAN St. No. 1, p. 9, lines 8-10; Application at ¶ 44; PAWC Statement No. 1, p. 8, lines 20-23 and p. 9, lines 1-1. PAWC and Brentwood therefore entered into the Cooperation Agreement to ensure that the Z Agreement and the Other Z Agreements would not be compromised and would continue to be uniform in the event of PAWC's acquisition. Tr. at p. 133; ALCOSAN St. No. 1, p. 9, lines 15-18. The Cooperation Agreement sets forth the rights and obligations under the Z Agreement that will be allocated to PAWC by Brentwood at closing if the proposed transaction is approved.

Through the Cooperation Agreement, Brentwood and PAWC expressly acknowledge the essential role of the Z Agreement and the Other Z Agreements for ALCOSAN to be able to continue to serve the sewage conveyance and treatment needs of its municipal customers, and agree to uphold and support the Z agreement and the Other Z Agreements. Application at Appendix A-25.3, Section 2.a.(ii).

Accordingly, in the event the Application is Approved, the Commission must approve the Cooperation Agreement as part of the transaction in the interest of the public.

E. Recommended Conditions for Approval

1. Missing Easements and Other Property Rights

ALCOSAN does not take a position either in opposition to or in support of the Application. ALCOSAN, therefore, takes no position regarding missing easements and other property rights.

2. Cost of Service Studies

ALCOSAN takes no position either in support of or in opposition to the proposed transaction. Accordingly, ALCOSAN takes no position on cost of service studies.

3. Rate Freeze

ALCOSAN takes no position either in support of or in opposition to the proposed transaction and also takes no position regarding PAWC's proposed rate freeze. As stated in Section IV.B.2. above, it is undisputed that ALCOSAN is a municipal authority and therefore undisputed that the Commission does not have jurisdiction over ALCOSAN's rates or charges, and that ALCOSAN's rates and charges are not at issue in this proceeding. Accordingly, if the Commission approves the proposed transaction and any rate freeze, ALCOSAN's rates and charges will not, and cannot, be subject to any rate freeze.

4. Customer Notices

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction and, therefore, ALCOSAN has no position on customer notices.

5. ALCOSAN charges and discounts

See Section IV.B.2. above.

6. Specific Notice for Brentwood customers prior to closing

ALCOSAN takes no position either in support of or in opposition to the proposed

transaction. ALCOSAN, therefore, has no position on notice for Brentwood customers.

7. Payment agent in Brentwood

ALCOSAN takes no position either in support of or in opposition to the Application and therefore takes no position on the issue of a payment agent in Brentwood if the Application is approved. ALCOSAN has no objection to PAWC assuming the billing tasks now performed by Brentwood in billing Brentwood users for ALCOSAN's charges. ALCOSAN's essential interest is that it is paid, by Brentwood or PAWC, for ALCOSAN's charges so that ALCOSAN can satisfy its obligations to regulators, lenders, and bondholders.

V. CONCLUSION AND REQUEST FOR RELIEF

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application. Should the Commission decide to approve the Application, however, the record evidence establishes that there is a substantial affirmative public benefit for ensuring the preservation and uniform enforcement of the Z Agreement and the Other Z Agreements. The record evidence also establishes the importance of the Cooperation Agreement in protecting those agreements. Accordingly, in the event the Application is Approved, the evidence in the record establishes the Commission should also approve the Cooperation Agreement without modification. The evidence further establishes that that the Commission should condition approval of the Application on each of the following requirements:

1. The Pittsburgh Zone Project Agreement of December 1, 1949 ("Z Agreement") shall not be amended or assigned;
2. Brentwood shall honor its obligations under the terms of the Z Agreement, including, but not limited to, fulling its obligations with respect to payments due to ALCOSAN;
3. The Cooperation Agreement shall not be amended; and

4. PAWC and Brentwood shall honor their obligations under the terms of the Cooperation Agreement, including, but not limited to, fulfilling their obligations with respect to payments due to ALCOSAN.

Respectfully submitted,

Dated: November 30, 2023

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Appendix A

LIST OF ALCOSAN SPONSORED TESTIMONY AND EXHIBITS

Direct Testimony of Douglas Jackson, P.E., ALCOSAN St. No. 1, together with ALCOSAN Exhibit 1 and a verification.

Appendix B

PROPOSED FINDINGS OF FACT

I. Preservation of the Z Agreement and Other Z Agreements

1. ALCOSAN, Pittsburgh, and Brentwood are parties to The Pittsburgh Zone Project Agreement of December 1, 1949 (the “Z Agreement”). PAWC Statement No. 1 p. 8, lines 18-20.

2. Under the Z Agreement, ALCOSAN is designated as the “Sewage Agency,” and serves as the sole and exclusive provider of wastewater treatment and conveyance services to 83 municipalities in the Commonwealth of Pennsylvania, including Pittsburgh and Brentwood. ALCOSAN St. No. 1, p. 2, lines 11-17.

3. To finance, construct, operate, and maintain its wastewater treatment and conveyance system, ALCOSAN has entered into agreements identical to the Z Agreement with each of its original customer municipalities and agreements substantially similar to the Z Agreement with subsequent customer municipalities, under which ALCOSAN is also designated as their exclusive provider for wastewater treatment and conveyance services (collectively referred to as the “Other Z Agreements”). ALCOSAN St. No. 1, p. 3, lines 6-11. ALCOSAN St. No. 1, p. 5, lines 21-22 and p. 6, lines 1-2.

4. ALCOSAN has been providing wastewater treatment and conveyance services since 1959 with a current service area extending over 310 square miles and nearly 900,000 individuals relying on its wastewater treatment and conveyance services. ALCOSAN St. No. 1, p. 2, lines 11-22 and p. 3, lines 3-4.

5. To provide its wastewater treatment and conveyance services, ALCOSAN holds a National Pollutant Discharge Elimination System (“NPDES”) Permit, NPDES Permit No. PA0025984, under which ALCOSAN is authorized to discharge treated sewage and industrial wastewater from its treatment plant to the Ohio River in accordance with the requirements set forth in the permit.

6. ALCOSAN is subject to Modified Consent Decree entered into between and among ALCOSAN, the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, and the Allegheny County Health Department. ALCOSAN St. No. 1, p. 6, lines 4-10.

7. The Modified Consent Decree approved and requires ALCOSAN to implement ALCOSAN’s Clean Water Plan. ALCOSAN St. No. 1, p. 6, lines 8-10.

8. ALCOSAN’s Clean Water Plan is a \$3.6 billion long-term plan that will significantly reduce combined sewage overflow within ALCOSAN’s service area by 7 billion gallons annually as well as eliminate sanitary sewage overflows to the maximum extent practicable. ALCOSAN St. No. 1, p. 6, lines 16-18.

9. Brentwood receives wastewater treatment and conveyance services from ALCOSAN pursuant to the Z Agreement and, therefore, is required to comply with the Modified Consent Decree obligations of reducing sewage overflows within its wastewater collection system. ALCOSAN St. No. 1, p. 7, lines 12-14.

10. To meet its obligations under the Modified Consent Decree obligations, Brentwood entered into a Consent Order and Agreement (the “COA”) with the Allegheny County Health Department. ALCOSAN St. No. 1, p. 7, lines 14-15.

11. Under the COA, Brentwood must perform certain corrective actions to reduce its sewage overflows and cooperate with ALCOSAN and ALCOSAN’s other municipal customers to implement ALCOSAN’s Clean Water Plan. ALCOSAN St. No. 1, p. 7, lines 14-17.

12. The Z Agreement and Other Z Agreements are essential for ALCOSAN to be able to provide its wastewater treatment and conveyance services within its service area. ALCOSAN St. No. 1, p. 8, lines 13-14.

13. The Z Agreement and Other Z Agreements establish ALCOSAN’s service area. ALCOSAN St. No. 1, p. 8, lines 6-7.

14. The Z Agreement serves as the foundational document for ALCOSAN’s entire service area and defines the relationship between and among ALCOSAN, Pittsburgh, and Brentwood. ALCOSAN St. No. 1, p. 8, lines 7-9.

15. In exchange for ALCOSAN’s services, and for ALCOSAN to be able to continue to provide its services, the Z Agreement imposes certain obligations upon Brentwood, including, but not limited to, rates, billing, payment, and collection arrangements. ALCOSAN St. No. 1, p. 8, lines 9-11.

16. The Z Agreement and Other Z Agreements authorize and are necessary for ALCOSAN to continue to meet its obligations under bond and trust indentures for financing past and future improvements to its system and other costs associated with ALCOSAN’s services and operations, including by establishing and raising rates as necessary. ALCOSAN St. No. 1, p. 8, lines 14-18.

17. The Z Agreement and Other Z Agreements are the foundation upon which ALCOSAN’s Clean Water Plan and Regionalization Program are based and are, therefore, essential for ALCOSAN to meet its obligations under the Modified Consent Decree. ALCOSAN St. No. 1, p. 8, lines 18-20.

18. PAWC’s Application seeks the Commission’s approval of the Cooperation and Allocation of Responsibilities Agreement between Brentwood and PAWC dated March 2, 2023 (the “Cooperation Agreement”), which is attached as Appendix A-25.3 to the Application. PAWC Application at ¶ 3.d.

19. For ALCOSAN to continue to provide its wastewater treatment and conveyance services and meet all obligations related to the same, the terms of the Z Agreement and Other Z Agreements

must remain unchanged and continue to be uniformly and consistently interpreted and implemented. ALCOSAN St. No. 1, p. 8, lines 20-23.

20. If the Application is approved, the Cooperation Agreement sets forth the rights and obligations under the Z Agreement that will be allocated to PAWC by Brentwood at closing. Application at ¶ 44; PAWC Statement No. 1, p. 8, lines 20-23 and p. 9, lines 1-1.

21. If the Application is approved, the Cooperation Agreement ensures the preservation and enforcement of the terms of the Z Agreement and Other Z Agreements upon PAWC acquiring Brentwood's System, including setting forth the relative rights and obligations of PAWC and Brentwood with respect to the Z Agreement and the Modified Consent Decree. ALCOSAN St. No. 1, p. 8, lines 13-14; PAWC Statement No. 1, p. 8, lines 22-23 and p. 9, lines 1-2; Appendix A-25.3.

APPENDIX C

PROPOSED CONCLUSIONS OF LAW

1. ALCOSAN is a Pennsylvania joint municipal authority organized under and governed by the Municipality Authorities Act, as amended, 53 Pa. C.S.A. §§ 5601-5623. ALCOSAN St. No. 1, p. 2, lines 8-11; Brentwood St. No. 1-R, p. 13, lines 9-10; PAWC St. No. 3-R, p. 6, lines 15-17; Tr. at p. 211, 224-225, 398, 408.

2. The Commission has no jurisdiction over ALCOSAN and no jurisdiction over ALCOSAN's rates and charges for its sewage treatment services. *See Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982); *Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984); *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Docket No. C-2021-3023624 (Opinion and Order entered November 1, 2023).

3. The Pittsburgh Zone Project Agreement of December 1, 1949 (the "Z Agreement") must remain in place among the original parties and cannot be assigned to PAWC. ALCOSAN St. No. 1, p. 9, lines 8-10; Application at ¶ 44; PAWC Statement No. 1, p. 8, lines 20-23 and p. 9, lines 1-1.

Appendix D

PROPOSED ORDERING PARAGRAPHS

In the event the Application is approved,

It is hereby ORDERED THAT:

The Cooperation and Allocation of Responsibilities Agreement between Brentwood and PAWC dated March 2, 2023 (the “Cooperation Agreement”) is approved pursuant to Section 507 of the Public Utility Code, and the Application is approved conditioned on the following requirements:

1. The Pittsburgh Zone Project Agreement of December 1, 1949 (“Z Agreement”) shall not be amended or assigned;
2. Brentwood shall honor its obligations under the terms of the Z Agreement, including, but not limited to, fulling its obligations with respect to payments due to ALCOSAN;
3. The Cooperation Agreement shall not be amended; and
4. PAWC and Brentwood shall honor their obligations under the terms of the Cooperation Agreement, including, but not limited to, fulling their obligations with respect to payments due to ALCOSAN.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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SALZMANN HUGHES, P.C.

Dated: November 30, 2023

/s/ Scott T. Wyland
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