



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

December 14, 2023

**Via Electronic Filing**

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

Re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code to acquire the wastewater collection and conveyance system owned by the Borough of Brentwood and to provide wastewater service to the public in the Borough of Brentwood in Allegheny County, Pennsylvania  
Docket No. A-2021-3024058  
**I&E Reply Brief**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Brief of the Bureau of Investigation and Enforcement ("I&E") in the above-captioned proceeding.

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

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright'.

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CBW/ac  
Enclosures

cc: Administrative Law Judge Katrina L. Dunderdale (*via Electronic and First-Class Mail*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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Dated: December 14, 2023

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## **I. PROCEDURAL HISTORY**

On November 30, 2023, the Bureau of Investigation and Enforcement (“I&E”) filed a Main Brief in this proceeding. The history of the proceeding was addressed in I&E’s Main Brief.<sup>1</sup> Also November 30, 2023, the Pennsylvania American Water Company (PAWC or Company), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Borough of Brentwood (Brentwood or Borough), and the Allegheny County Sewer Authority (ALCOSAN) also filed Main Briefs. The issues addressed in this I&E Reply Brief are limited to matters raised in the other Parties’ Main Briefs that relate to recommendations made in the I&E Main Brief.

## **II. BURDEN OF PROOF**

In its Main Brief, I&E explained that PAWC, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application.<sup>2</sup> PAWC’s burden includes the obligation to establish a preponderance of evidence which is substantial and legally credible.<sup>3</sup> In order to meet its burden of proof, PAWC must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.<sup>4</sup> To satisfy its burden, PAWC must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved.<sup>5</sup> Specific to this case, PAWC has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102,

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<sup>1</sup> I&E Main Brief, p. 1.

<sup>2</sup> I&E Main Brief, pp. 2-3; 66 Pa. C.S. § 332(a).

<sup>3</sup> PAWC Main Brief, p. 9; *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>4</sup> PAWC Main Brief, p. 9; *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

1103, 2102 and 1329 of the Code. PAWC has not met its burden because its Application does not comply with any of the applicable sections of the Code.

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

PAWC is seeking to acquire the Brentwood wastewater system, which is a sanitary sewer collection system, serving approximately 83,974 public, commercial, and residential customers, that conveys all sewage to ALCOSAN. The Application, as filed, is not in the public interest. The Company has not alleged any substantial, affirmative public benefits that will be produced by the acquisition as required by *City of York*.<sup>6</sup> Further, the interconnection of this system with ALCOSAN makes the acquisition troubling as it would require PAWC and Brentwood customers to pay for a return of and on rate base that is not used and useful in their service.

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

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

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<sup>6</sup> *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

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

#### **IV. ARGUMENT**

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

The Code requires that the Commission issue a certificate of public convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.<sup>7</sup>

The standards for the issuance of a certification of public convenience are set forth in Sections 1102 and 1103 of the Code.<sup>8</sup> A certificate of public convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”<sup>9</sup> These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.<sup>10</sup> To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.<sup>11</sup>

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<sup>7</sup> 66 Pa. C.S. § 1102(a).

<sup>8</sup> 66 Pa. C.S. §§ 1102, 1103.

<sup>9</sup> 66 Pa. C.S. § 1103(a).

<sup>10</sup> *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

<sup>11</sup> 66 Pa. C.S. § 1103(a).

Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire. In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”<sup>12</sup> including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.<sup>13</sup>

### **1. Fitness**

I&E did not challenge PAWC’s legal or technical fitness to own or operate any of the assets Brentwood has agreed to convey.

### **2. Substantial Affirmative Benefits Test**

#### **a. Benefits to the Public at Large**

In Main Brief, PAWC attempts to demonstrate that the acquisition would benefit the public at large. In doing so, PAWC makes a vague reference to the Commission’s Section 1329 Tentative Implementation Order<sup>14</sup> and its Section 1329 Tentative Supplemental Implementation Order.<sup>15</sup> PAWC simply states that “[t]he Commission has recognized that Section 1329 reflects a Legislative determination that fair market value acquisitions of municipal water and wastewater systems further the public interest.”<sup>16</sup> However, PAWC gives no specific reference to where this information is found in these

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<sup>12</sup> *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

<sup>13</sup> 66 Pa. C.S. § 1103(a).

<sup>14</sup> *Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered Jul. 21, 2016).

<sup>15</sup> *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered Sept. 20, 2018).

<sup>16</sup> PAWC Main Brief, p. 15.

Orders. Regarding the public interest, the *Tentative Implementation Order* simply notes that that testimony included with the Application should state how the acquisition is in the public interest.<sup>17</sup> The Commission's *Tentative Supplemental Implementation Order*, is far closer to being on point, but only explains that the question of whether an acquisition is in the public interest is dependent on the value of the property, but the valuation does play a significant role.<sup>18</sup> Simply put, the use of Section 1329 does not provide any confirmation that an acquisition is in the public interest. The value of the assets to be acquired is part of the consideration whether the acquisition is a Section 1329 acquisition or not. The likely higher price attached to a Section 1329 acquisition is not confirmation that the acquisition is in the public interest. It simply makes the acquisition more attractive for a municipality.

PAWC then notes that this acquisition serves the public interest because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems at 52 Pa. Code § 69.721.<sup>19</sup> However, reliance on this policy statement is largely misplaced. While the Commission, no doubt, has a policy favoring consolidation and regionalization of water and wastewater systems, simply reading 52 Pa. Code § 69.721(c) makes clear that this regulation is referring to valuation methodology in which the acquired assets are booked at original cost less accrued depreciation referring

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<sup>17</sup> *Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193, p. 10 (Order entered July 21, 2016).

<sup>18</sup> *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193, p. 3 (Order entered September 20, 2018).

<sup>19</sup> PAWC Main Brief, p. 15.

to 66 Pa. C.S. § 1311(b). Under this valuation methodology, assets are valued much lower than the fair market valuations under Section 1329 resulting in a much lower purchase price. As Section 69.721(a) notes, regionalization and consolidation should allow utilities to achieve greater economies of scale, meaning that a larger customer base over which to spread costs results in lower costs overall because those costs are spread to more ratepayers. However, under Section 1329, the valuations are much higher which drives up the purchase price and the assets are placed in rate base at a much higher valuation than under prior methodologies. Customers pay a return of and a return on these higher rate base values, which significantly diminishes any economies of scale benefit given that rates continue to rise significantly for both current customers and those customers of the acquired utilities. The goal of regionalization and consolidation is not simply to acquire as many water and wastewater systems as possible and combine them into one system, but to consolidate systems in a way that benefits customers. Here, PAWC has failed to demonstrate that its existing customers or the Brentwood customers will benefit if the acquisition is approved.

Next, PAWC argues that approval is warranted as Brentwood has a history of being in violation of state and federal environmental regulations.<sup>20</sup> PAWC asserts the Commission should compare what would happen if the Acquisition is approved versus what would happen if it was not.<sup>21</sup> However as explained in the I&E Main Brief, with regard to infiltration and inflow (I&I), which has been an issue for some time with the

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<sup>20</sup> PAWC Main Brief, p. 16.

<sup>21</sup> PAWC Main Brief, p. 19.

system, it appears Brentwood is currently taking the necessary steps to correct this issue. As OCA witness DeMarco explains, Brentwood appears to be improving its system and meeting the milestones in the agreements it has entered into.<sup>22</sup>

Moreover, Brentwood is not a troubled system with no access to capital. As explained by Borough Manager Zboyovsky the Borough is not financially in distress.<sup>23</sup> Further, the Borough has not had issues funding infrastructure replacement and the Brentwood system has “good cashflow.”<sup>24</sup>

Even under PAWC’s ownership, the resolution of the I&I problems faced by the Brentwood system is a long, multi-step process. This process is likely to follow the same pattern currently followed by Brentwood regardless of who owns the system. The I&I issues are due in part to upstream municipalities and there is no quick fix on the horizon to resolve these concerns; however, it does not appear that PAWC’s ownership will result in much change. There has been no indication that Brentwood will simply cease to work on the environmental issues the system faces and there is no evidence that PAWC will resolve the environmental issues at a faster pace than Brentwood. Therefore, looking at what will occur if the transaction is approved versus what will happen if it is not approved as PAWC suggested, does not appear to be much difference and certainly does not rise to the level of a substantial public benefit. While PAWC has improved systems with challenges in the past,<sup>25</sup> PAWC has provided no evidence to demonstrate that

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<sup>22</sup> OCA St. No. 1, p. 10.

<sup>23</sup> Appendix A-13 a p. 5 lines 2-3.

<sup>24</sup> OCA St. No. 1, pp. 14-15.

<sup>25</sup> PAWC Main Brief, p. 20.

Brentwood is not capable of doing so on its own and is not currently taking the necessary steps to do so.

**b. The Transaction Benefits the Borough of Brentwood and its Citizens.**

In support of approval, PAWC explains this transaction accomplishes the will of the elected officials who worked on this sale.<sup>26</sup> While I&E does not dispute that this may be true, it is not an affirmative public benefit.

As PAWC states, the primary benefit of the transaction is that Brentwood will receive \$19 million through the sale of the system.<sup>27</sup> This is hardly a benefit to PAWC's current customers as water customers should not be relied upon to act as a backstop if Brentwood is in financial distress. Moreover, it is unclear to what extent this acquisition will actually help the Borough. While the Brentwood area will receive a one-time infusion of cash through the sale, as PAWC notes, its debt repayment obligations are approximately \$900,000 per year.<sup>28</sup> Therefore, it is unclear if this one-time infusion of cash would be sufficient to actually effectuate change given the large debt obligations. Further, it is clear that, Brentwood customers will likely face rate increases regardless of who owns the system. PAWC and Brentwood have failed to demonstrate that the cash infusion to the municipality offsets the potentially significant rate increases for Brentwood customers.

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<sup>26</sup> PAWC Main Brief, p. 21.

<sup>27</sup> PAWC Main Brief, p. 21.

<sup>28</sup> PAWC Main Brief, p. 22.

This concern was recently highlighted by the Commonwealth Court in its *East Whiteland* decision, "...although Township would receive funds from the sale, which could be used for other governmental purposes, those funds are available because the System's customers, and potentially Aqua's current customers, will bear the burden of the costs of that acquisition."<sup>29</sup> The same is true here for Brentwood and PAWC ratepayers. In short, PAWC is not obligated to relieve Brentwood of its financial burden by shifting that burden to its customers. Therefore, the alleged benefits to the Borough do not rise to the level of a substantial affirmative benefit that warrants approval of this acquisition.

**c. The Transaction Benefits the Customers of the Brentwood System.**

PAWC has failed to demonstrate that Brentwood customers will benefit if the acquisition is approved.

Just the opposite is true from a rates perspective given that, PAWC's Main Brief contained a chart that demonstrates how exorbitant rate increases tend to be for the customers of the systems being acquired under Section 1329, with proposed increases ranging from 11% to 47%.<sup>30</sup> Additionally, it is important to note that these percentages are simply the proposed increases for PAWC's currently pending base rate case; therefore, it does not reflect potential recommendations made by other parities to increase those amounts above what PAWC has proposed nor does it reflect the final determination

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<sup>29</sup> *Cicero v. Pennsylvania Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Commw. 2023).

<sup>30</sup> PAWC Main Brief, p. 24.

by the Commission regarding what the actual rates should be. Furthermore, it also does not account for the frequency with which PAWC will seek to increase rates.

In support of the alleged benefits to Brentwood customers, the Borough explains that under PAWC ownership customers will have 24/7/365 access to PAWC customer service representatives.<sup>31</sup> However, in the *East Whiteland* case, the Commonwealth Court was not persuaded that this was a true benefit as it noted that while Aqua had a toll-free line to provide 24/7/365 customer service, East Whiteland did as well even if part of that service required a call to the police.<sup>32</sup> In this case, much like East Whiteland, Brentwood can similarly provide 24/7/365 service. Therefore, PAWC's 24/7/365 access is not a true benefit.

In addition to this customer service argument, Brentwood's Main Brief discusses the environmental impacts it believes will flow from the approval of this transaction.<sup>33</sup> However, as discussed above, those arguments do not rise to the level of affirmative public benefits because there has been no demonstration that Brentwood is not able to effectively deal with any environmental compliance issues in any manner that would differ significantly from that of PAWC. Additionally, Brentwood criticizes I&E witness Kubas for his acknowledgement that to provide the exact same level of service as PAWC, Brentwood would likely need to raise rates.<sup>34</sup> Brentwood goes on to refer to this as the exact same harm PAWC's ownership would cause and stating that I&E's argument is

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<sup>31</sup> Brentwood Main Brief, p. 18.

<sup>32</sup> *Cicero v. Pennsylvania Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Commw. 2023).

<sup>33</sup> Brentwood Main Brief, pp. 14-17.

<sup>34</sup> Brentwood Main Brief, p. 22.

mind-boggling.<sup>35</sup> I&E does not understand the Borough's confusion given that, to obtain Commission approval of this transaction, it has the burden to demonstrate affirmative public benefits. Brentwood appears to argue that both PAWC and Brentwood will cause the same harm in the form of potential rate increases, which is clearly not a showing of affirmative public benefits. I&E and Brentwood are on the same page that large rate increases for these customers are harmful, but Brentwood's argument that rates will increase under regardless of whether it or PAWC owns the system is in no way an affirmative benefit. I&E's point is that Brentwood is currently doing a satisfactory job running its system and there is no record evidence showing that it cannot do so without imposing a rate increase of the magnitude that will likely occur under PAWC's ownership.

Brentwood explains that it is "preposterous" to assume that the Borough could ever obtain the same level of expertise as PAWC.<sup>36</sup> However, the level of expertise Brentwood requires is proportional to its size and system requirements. Given Brentwood's small size as compared to PAWC it is unlikely that Brentwood requires the same level of expertise as the Commission's largest water and wastewater provide because Brentwood does not face the same challenges. I&E recognizes that placing Brentwood on par with PAWC's expertise is likely unattainable in the Borough, but that is because a small utility such as Brentwood does not require the same level of expertise

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<sup>35</sup> Brentwood Main Brief, p. 22.

<sup>36</sup> Brentwood Main Brief, p. 23.

as PAWC. Therefore, there is no indication that PAWC's more robust expertise is an affirmative public benefit that warrants approval of this transaction.

I&E submits that neither PAWC nor Brentwood have been able to show that the benefits, if any, of this transaction outweigh the harms. To reiterate I&E's position, under PAWC's ownership it is likely that Brentwood customers will face large rate increases. Further, to the extent that those rates are not substantially increased, existing PAWC customers face the burden of subsidizing the Brentwood customers. All the alleged benefits result not from the acquisition itself, but from the size and technical fitness of PAWC. However, it does not appear that Brentwood is operating its system in such a way as to need the leadership of a larger utility to maintain safe and reliable service. Something more than a willing buyer and willing seller is required for the Commission to determine that an acquisition meets the affirmative public benefits test. Here, PAWC has simply not demonstrated that anything more than the status quo will result from this transaction.

With no concrete evidence that Brentwood cannot and is not operating its system in a safe and reliable manner, and no evidence presented that it cannot continue to operate it at a potentially lower cost than PAWC, we are left only with the vague assertions of regionalization and consolidation as the alleged affirmative public benefits of this transaction. These vague "benefits" are those that would be present in any acquisition and simply do not rise to the level of an affirmative public benefit. Therefore, I&E maintains that the Application, as filed, does not meet the affirmative public benefits test and must be rejected.

**d. The Transaction Benefits PAWC's Existing Wastewater Customers.**

PAWC notes that the acquisition will have no immediate effect of the rates of PAWC's existing wastewater customers.<sup>37</sup> While it is fortunate that there will be no immediate impact on existing rates, this is simply maintaining the status quo for a certain period of time and it does not account for the future impact on rates that will occur for these current PAWC customers.

PAWC states that more customers to share future infrastructure investments with will promote stable rates across the system.<sup>38</sup> However, this has yet to occur, which is demonstrated by the frequency that PAWC files base rate cases. Recent history demonstrates that PAWC's customers have seen significant rate increases and PAWC has not provided a timeline indicating when this will stop. I&E fully recognizes that PAWC is permitted to file rate cases on the timeline of its choosing; however, it is clear that PAWC's continued acquisition of new customers and systems has not slowed down its rate case filing frequency or resulted in rate stability for its customers. Therefore, the larger customer base alone is not enough to demonstrate that this transaction is in the public interest.

**e. The Transaction Benefits PAWC's Existing Water Customers**

For mostly the same reasons PAWC believes the acquisition will benefit wastewater customers, it believes the acquisition will similarly benefit water customers.

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<sup>37</sup> PAWC Main Brief, p. 30.

<sup>38</sup> PAWC Main Brief, p. 31.

For example, PAWC argues that that there will be no immediate impact on water rates if the transaction is approved.<sup>39</sup> However, as described above with respect to wastewater customers, this does not rise to the level of an affirmative public benefit because, based on other Section 1329 acquisitions, rate increases are likely to occur as a result of these acquisitions.

PAWC goes on to explain that “[t]he Pennsylvania Legislature recognized the importance of consolidation and cost sharing with the passage of Act 11 of 2012.”<sup>40</sup> Act 11 allows for the allocation of a portion of the wastewater revenue requirement to water customers if it is in the public interest. While Act 11 certainly allows for this cost sharing and the Commission has agreed that this type of cost sharing is in the public interest, it does not follow that this acquisition is in the public interest. Simply approving an acquisition so that PAWC can spread costs to water customers serves as nothing more than a detriment to its current water customers who would not otherwise be obligated to pay a portion of the Brentwood revenue requirement.

#### **f. Conclusion**

As demonstrated above, PAWC has failed to show that the affirmative public benefits test has been met. With no benefits for either Brentwood customers, or PAWC’s existing customers, the Commission must deny this acquisition.

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<sup>39</sup> PAWC Main Brief, p. 31.

<sup>40</sup> PAWC Main Brief, p. 31.

## **B. Section 1329 Issues**

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

Regarding the Fair Market Value, in testimony I&E witness Kubas recommended “...the plant, or portion of the plant used to serve ‘non-customers’ should be removed from the requested rate base of \$19,643,443.”<sup>41</sup> Witness Kubas goes on to explain that PAWC failed to provide any analysis that would indicate the amount of plant that is being used by non-customers so he was unable to quantify exactly the amount that should be removed.<sup>42</sup> Because it is impossible to determine the appropriate amount of Brentwood rate base that should be incorporated into PAWC’s rate base, I&E does not believe this acquisition should be approved. However, if the Commission determines that approval is warranted, PAWC must be required to undertake a study that separates this plant used to serve non-customers from the rest of the plant in service so that an accurate rate base can be established. While I&E still does not believe that the record evidence supports approval of this acquisition, if the Commission determines that approval is warranted, it is inappropriate to require customers to pay for a return of and a return on rate base that is not used and useful to serve non-customers.

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

I&E took no specific position regarding the tariff and rates, other than noting that the notice provided to Brentwood customers was likely inaccurate as to the rate increases that should be expected.

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<sup>41</sup> I&E St. No. 1, p. 13.

<sup>42</sup> I&E St. No. 1, pp. 13-14.

### **3. DSIC**

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

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

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

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

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

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

I&E noted in testimony that Section 1329 permits only the acquiring public utility's transaction and closing costs to be included in rate base and recovered from ratepayers.<sup>43</sup> Thus, I&E recommended that the Commission order explicitly exclude these costs from the ratemaking rate base and not otherwise be passed along to ratepayers which it appears is PAWC's intention. Therefore, I&E simply requests this be memorialized in the Recommended Decision and the Commission's final Order.

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<sup>43</sup> I&E St. No. 1, p. 21.

## **6. Additional Issues**

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

As explained in the I&E Main Brief, because the Brentwood system is a conveyance only system in which Brentwood discharges its wastewater and the wastewater flow of customers who are not Brentwood customers, the “non-customers,” into the Baldwin Borough, Whitehall Borough and City of Pittsburgh systems, all of which is eventually combined and treated at the ALCOSAN treatment plant.<sup>44</sup>

I&E remains concerned about the inclusion of plant used to serve these non-customers in rate base as doing so means that PAWC customers pay a return of and return on this plant in their rates. As a result, I&E believes it is in the public interest for PAWC to conduct a study which separates out the plant used to serve those entities who have been deemed customers, versus those who have been deemed non-customers, so that an accurate and appropriate rate base can be determined.<sup>45</sup> Until that occurs, the Commission will have no way to determine the appropriate amount to place into rate base if this acquisition is approved.

PAWC believes the I&E position is inconsistent with Sections 1102 and 1103 of the Public Utility Code, which require the Commission to find that there are affirmative public benefits before an acquisition is approved. As explained in detail above, PAWC has been unable to show there are affirmative public benefits to this acquisition; therefore, regardless of whether or not the study is conducted, I&E submits the

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<sup>44</sup> PAWC St. No. 2, p. 6.

<sup>45</sup> I&E St. No. 1, p. 14.

acquisition has already failed the affirmative public benefits test. Nevertheless, I&E contends that it would be consistent with Sections 1102 and 1103 to require this study before an acquisition of this type could be approved. This is because it is not an affirmative public benefit to require ratepayers to pay for utility plant that is not used and useful in service to its customers, nor would it be in the public interest to do so.

PAWC argues that because this is the first time a municipal system that is part of ALCOSAN has attempted to sell its system the Commission should not issue a decision that would prevent other municipalities from selling their systems because they are part of ALCOSAN.<sup>46</sup> I&E disagrees for two reasons. First, as this is the first time this ALCOSAN issue has arisen in a 1329 proceeding, this is where the Commission must determine whether these acquisitions are in the public interest. If it is inappropriate for these systems to be acquired by a regulated utility because of this interconnection, then the Commission is well within its authority to deny these types of acquisitions in this proceeding. Second, it is wholly appropriate for I&E and other parties to make recommendations in this case that may help guide future acquisitions of municipalities that are part of ALCOSAN. Specifically, I&E recommended that the acquisition be denied unless and until a study was undertaken that would separate out the utility plant used to serve customers to determine an accurate rate base. To be clear, I&E did not recommend that the Commission must never approve the acquisition of a municipal system that is part of the ALCOSAN system. Rather, it recommended that specific

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<sup>46</sup> PAWC Main Brief, p. 40.

information be provided so that the parties and Commission have the necessary information to ensure just and reasonable rates.

Further, PAWC states that not approving this transaction might dissuade more than 80 municipal utilities that are connected to ALCOSAN from selling their systems. Again, PAWC has taken this argument to an illogical extreme. I&E's position is that the ratemaking rate base should be accurate and that it is not in the public interest for customers to pay a return of and a return on rate base that is not used and useful to serve utility customers. To remedy this concern, I&E recommended that a cost of service study be conducted.

Again, for the reasons listed above, I&E does not believe the acquisition passes the affirmative public benefits test. However, even if it were to pass the affirmative public benefits test, I&E continues to believe the acquisition must be denied unless and until a study is provided that separates out the cost of plant used to serve non-customers from that used to serve customers. PAWC has not presented any evidence that shows that anything less would be appropriate.

**b. The Rate Freeze is a Rate Stabilization Plan**

I&E took no position on whether the rate freeze constitutes a rate stabilization plan.

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

I&E does not dispute that the notice conforms to the form of notice the Commission has approved. I&E, however, is concerned that the rate increase contained

therein may not portray an accurate picture of what future rates may be for these customers. I&E is not “dissatisfied with the bargain its struck” as PAWC alleges.<sup>47</sup> I&E is simply concerned that the rate impact could be worse than these customers expected.

As explained in the I&E Main Brief, PAWC has a history of under-projecting the increases necessary for systems acquired under Section 1329.<sup>48</sup> For example, in the Royersford Acquisition, at Docket A-2020-3019634,<sup>49</sup> PAWC projected an increase of \$1,102,000; however, in the first base rate case, PAWC showed an actual increase of \$2,061,092. Similarly, in the Upper Pottsgrove Application, at Docket A-2020-3021460, PAWC projected an increase of \$1,002,000. In the first base rate case, PAWC showed an actual increase of \$1,471,196. Finally, in the York Wastewater Application, at Docket A-2021-3024681, PAWC projected an increase of \$17,557,000 while the actual increase was \$23,248,247.<sup>50</sup> Based upon these comparisons, it can be seen that the projected revenue increase in each case was less than the increase in the first base rate case for the respective systems. Therefore, the notices provided to these customers understated the size of the rate increase that would be necessary for these acquired customers.

Customers should be provided with information regarding the rate increases they can expect that is as accurate as possible. Consistently under projecting increase makes these acquisitions appear more palatable than they actually are. This deficiency should be cured.

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<sup>47</sup> PAWC Main Brief, p. 51.

<sup>48</sup> I&E St. No. 1, p. 28.

<sup>49</sup> Note that in the Royersford Application, PAWC reflected the incorrect docket number of A-2020-3014248 on the schedules, which are reflected on I&E Ex. 1, Sch. 4, pp. 1-2.

<sup>50</sup> I&E St. No. 1, p. 29.

**C. Section 507 Approvals**

I&E did not address Section 507 approvals.

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

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

**E. Recommended Conditions for Approval**

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

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

As explained in the PAWC Main Brief, PAWC does not object to I&E's recommendation regarding missing easements.<sup>51</sup> I&E recommends that the closing of the transaction not be permitted to occur unless and until Brentwood provides proof to PAWC's satisfaction that it has (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so that PAWC's ratepayers are not burdened with those costs and associated expenses.<sup>52</sup>

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<sup>51</sup> PAWC Main Brief, p. 45.

<sup>52</sup> I&E St. No. 2, pp. 6-7.

Further, I&E recommends that the Commission condition the approval of PAWC's Application that for circumstances beyond Brentwood's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, PAWC and Brentwood may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.<sup>53</sup> In addition, PAWC has agreed to establish an Easement Escrow Fund which will be funded at \$2,000 for each missing easement at the time of closing.<sup>54</sup>

As a result, I&E recommends that if this acquisition is approved, these recommendations be memorialized in the Recommended Decision and final Order of the Commission related to this proceeding.

## **2. Cost of Service Studies**

PAWC explains in its Main Brief that it objects to I&E's recommendation to provide a cost of service study for the Brentwood system and additionally a study that separates out the plant in the Brentwood system that is used to serve non-customers.<sup>55</sup> PAWC objects because its view is that the plant is used and useful. As explained above, I&E disagrees with this designation and continues to recommend PAWC provide a separate cost of service study, not only for the Brentwood system, but to separate out the

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<sup>53</sup> I&E St. No. 2, p. 7.

<sup>54</sup> PAWC St. No. 1, p. 13.

<sup>55</sup> PAWC Main Brief, p. 46.

plant serving what everyone seems to agree are not Brentwood customers. This recommendation is important so that, if the acquisition is approved, neither PAWC's existing customers nor the newly acquired Brentwood customers are paying a return of and on rate base that is not used and useful in service to customers.

In a system such as Brentwood that is interconnected with the ALCOSAN system, it is important to have this cost of service study in each base rate case because of the complexity of the interconnection and to ensure that customers do not bear costs to serve those who are not PAWC customers. Therefore, if the acquisition is approved, I&E recommends the Commission direct PAWC to provide a cost of service study going forward that separates out the Brentwood system. I&E also recommends the Commission direct PAWC to provide a cost of service study that separates out plant used .to serve non-customers so ratepayers are not unduly burdened with costs that do not belong to them.

### **3. Rate Freeze**

It is ultimately I&E's position that the rate freeze is not enforceable insofar as the Commission will always retain its rate setting authority regardless of what PAWC agrees to propose in future rate filings.

I&E, however, withdraw its recommendation to deny the rate freeze in Surrebuttal Testimony. This point was missed in the I&E Main Brief as I&E argued its position in Direct Testimony and did not reflect the fact that its position was withdrawn in Surrebuttal Testimony. As a result, please disregard the I&E Main Brief Sections IV.B.6.b. and IV.E.3.

#### **4. Customer Notices**

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

As previously discussed, PAWC has a history of under projecting customer rate increases in its prior acquisition proceedings. This deficiency needs to be corrected. As I&E witness Kubas explained, the Commission needs to affirm that base rate increases are likely to be higher than PAWC is projecting to customers in these notices.<sup>56</sup>

Therefore, if the Commission approves this transaction, it should direct PAWC to provide Brentwood customers with an accurate indication of what level of rate increase they can expect and direct PAWC going forward to provide customers of future acquisitions with an accurate assessment of the level of rate increase they should expect.

#### **5. ALCOSAN Charges and Discounts**

I&E took no specific position on the ALCOSAN charges and discounts.

#### **6. Specific Notice for Brentwood Customers Prior to Closing**

I&E took no position related to a notice specifically to Brentwood customers prior to closing. I&E's argument related to notice concerned the fact that it is likely the rate increase contained in the notice to Brentwood customers is understated.

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<sup>56</sup> I&E St. No. 1-SR, p. 34.

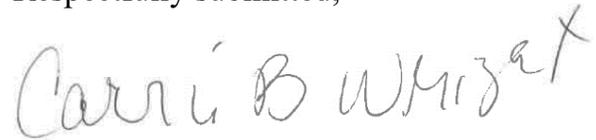
**7. Payment Agent in Brentwood**

I&E took no position on whether there should be a Payment Agent in the Brentwood Borough.

**V. CONCLUSION**

For the reasons stated above, the proposed transaction does not affirmatively promote the public interest in a substantial way. Therefore, I&E recommends that the Application be denied.

Respectfully submitted,

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

Carrie B. Wright  
Prosecutor  
PA Attorney ID No. 208185

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American :  
Water Company under Sections 1102(a) :  
and 1329 of the Pennsylvania Public :  
Utility Code to acquire the wastewater :  
collection and conveyance system : Docket No. A-2021-3024058  
owned by the Borough of Brentwood :  
and to provide wastewater service to the :  
public in the Borough of Brentwood in :  
Allegheny County, Pennsylvania :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Brief** dated December 14, 2023, in the manner and upon the persons listed below.

**Served via Electronic Mail Only**

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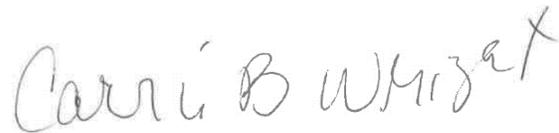
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