

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

Public Meeting held January 18, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Joint Application of The York Water Company - Wastewater (York Water-WW) and MESCO, Inc. (MESCO) for approval of: (1) the transfer by sale of certain public wastewater facilities from the Estate of Jane M. Alexander acting through its executors Lorinda Krause and Marstin Alexander and MESCO to York Water-WW; (2) the abandonment by MESCO of wastewater service to the public in its service territory in Monaghan Township, York County Pennsylvania; and (3) York Water-WW to offer, render, furnish and supply wastewater service to the public in a portion of Monaghan Township, York County, Pennsylvania

Docket Nos.
A-2023-3041009
A-2023-3041010

ORDER

BY THE COMMISSION:

By the joint application (Joint Application) filed on May 30, 2023, The York Water Company-Wastewater (York Water-WW), Utility Code 230087, and MESCO, Inc. (MESCO), Utility Code 230280, seek certificates of public convenience pursuant to Sections 1102(a)(1)(i), (2), and (3) of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 1102(a)(1)(i), (2), and (3), evidencing Pennsylvania Public Utility Commission (Commission) approval of: (1) the transfer by sale of certain public wastewater facilities from the Estate of Jane M. Alexander acting through its executors Lorinda Krause and Marstin Alexander (the Alexander Estate) and MESCO to York Water-WW; (2) the abandonment by MESCO of wastewater service to the public in its

service territory in Monaghan Township, York County, Pennsylvania; and (3) York Water-WW to offer, render, furnish and supply wastewater service to the public in a portion of Monaghan Township, York County, Pennsylvania.

I. AFFECTED ENTITIES AND BACKGROUND

York Water-WW is a regulated public utility company, duly organized and existing under the laws of the Commonwealth with its office located at 130 East Market Street, York, Pennsylvania 17401. As of December 31, 2022, York Water-WW furnished wastewater service to approximately 5,859 customers in portions of ten municipalities throughout York, Franklin, and Adams Counties. York Water-WW is a division of The York Water Company (York Water), Utility Code 213550. As of December 31, 2022, York Water furnished water service to approximately 70,872 customers in portions of York, Franklin, and Adams Counties.

MESCO is a regulated public utility company, duly organized and existing under the laws of the Commonwealth with a primary business address of 37 Summer Drive, Dillsburg, Pennsylvania 17019. MESCO owns and operates a wastewater collection and treatment system (MESCO System) providing wastewater service to approximately 180 residential customers (MESCO Customers) within its certificated service territory in Monaghan Township, York County. MESCO is wholly owned by the Alexander Estate.¹

As discussed further in Section IV below, York Water-WW, MESCO, and the Alexander Estate (collectively, Joint Applicants) entered into a purchase agreement (Purchase Agreement), dated June 9, 2022, for York Water-WW to purchase the MESCO System. In supplemental information filed with the Commission, the Joint Applicants indicated that water service for MESCO Customers is provided by on-lot wells. No change in water service is contemplated within the Joint Application.

¹ See, *Class A, B And C Wastewater Company PUC Annual Report* of MESCO, filed on March 1, 2023, at page 9.

York Water-WW submitted proofs of publication and service to the appropriate entities. Notice of the Joint Application was published in the *Pennsylvania Bulletin*, 53 Pa.B. 3178, on Saturday, June 10, 2023. The protest period ended June 26, 2023. No protests were filed, and no hearings were held.

II. LOCATION AND DESCRIPTION OF REQUESTED TERRITORY

A map of an initial requested territory and a metes and bounds description of the requested territory's boundaries were provided as the Joint Application's Exhibits B1 and C, respectively. However, in supplemental information filed with the Commission as Attachment A-21-1, York Water-WW provided a revised requested service territory map and written description to include an additional parcel of land that is in MESCO's currently certificated service territory. The revised requested territory is situated in the western portion of Monaghan Township, York County, east of U.S. Route 15 and west of Fileys Road, and encompasses approximately 129 acres of land. This territory is approximately 21 miles from York Water-WW's nearest wastewater system and primarily encompasses a residential subdivision known as Memphord Estates.

III. DESCRIPTION OF FACILITIES FURNISHING SERVICE

In the Joint Application, York Water-WW indicated that major MESCO System assets include a collection system, and a wastewater treatment plant (WWTP) with an outfall discharge to Stony Creek. Additionally, York Water-WW would acquire the utility easements, rights-of-way, and real property assets related to the MESCO System. The Purchase Agreement further defined the MESCO System assets subject to the transaction. **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL]

The WWTP has a design capacity of approximately 50,000 gallons per day (GPD), and York Water-WW expects to be able to meet projected capacity requirements through 2036. In supplemental information filed with the Commission, York Water-WW indicated that the Memphord Estates subdivision is built out and that the subdivision's current estimated demand of 20,800 GPD is expected to remain unchanged.

MESCO has compliance issues with the Pennsylvania Department of Environmental Protection (DEP). In supplemental information filed with the Commission, York Water-WW provided a copy of MESCO's Consent Order and Agreement (CO&A) with DEP dated May 31, 2023. According to the CO&A, an inspection conducted by DEP on October 10, 2018, revealed that the equalization tank lift pumps were inoperable, both clarifier units had sludge accumulation on the surface, a clarifier skimmer was not functioning, the effluent troughs were in disrepair, and the chlorine unit tank was leaking. DEP conducted a follow-up inspection on November 13, 2019, which revealed that these issues were still unresolved and uncovered electrical issues at MESCO's pump station. MESCO has also had several sanitary sewer overflows recorded by DEP, as discussed below in Section V.

IV. PURCHASE AGREEMENT

As stated above, on June 9, 2022, York Water-WW entered into the Purchase Agreement with the Alexander Estate and MESCO to purchase the MESCO System for a purchase price of \$25,000. In supplemental information filed with the Commission, York Water-WW averred that MESCO and it are not affiliated with each other and that all negotiations between the two were conducted at arm's length. A confidential copy of the Purchase Agreement was included in the Joint Application as Exhibit E.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

In the Joint Application, York Water-WW averred that there have been no contributions toward the construction of the MESCO System and that the MESCO System has no outstanding PENNVEST loans. However, in supplemental information filed with the Commission, York Water-WW indicated that there will be \$22,650 in remaining net contributions in-aid-of construction (CIAC) at the end of 2023. The CIAC originated from hook-up/tap-in fees that MESCO charged prior to its 2005 base rate case. In the Joint Petition for Settlement of that rate case, MESCO agreed to no longer charge hook-up/tap-in fees and to treat its previously collected hook-up fees, amounting to \$63,109, as CIAC. The Joint Petition for Settlement's Appendix E also included a schedule for the depreciation/amortization of this CIAC on a straight-line basis over 40 years. York Water-WW indicated that it would depreciate/amortize the remaining CIAC per the agreed upon schedule from MESCO's 2005 base rate case.² In the Joint Application, York Water-WW indicated that it would perform an original cost study for the MESCO System and that a more detailed listing and description of assets would be provided when this study is completed.

Through this Order, we will direct York Water-WW to file a copy of its original cost study with the Commission upon completion of the study.³ Also, we direct York Water-WW to provide, at the time of filing its next base rate case which proposes to

² See, *Pennsylvania Public Utility Commission v. Mesco, Inc., et al.*, Order entered March 2, 2006, at Docket No. R-00050678.

³ See, Ordering Paragraph No. 9.

include the MESCO System in rate base, testimony that specifically references this docket number and that justifies any amount claimed in rate base, including capitalized transaction and closing costs, in order to evaluate the reasonableness of original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Public Utility Code, 66 Pa.C.S. § 1327.⁴

V. ADDITIONAL CAPITAL REQUIREMENTS

In the Joint Application, York Water-WW included tentative journal entries for booking the transaction. In supplemental information filed with the Commission, York Water-WW modified these tentative journal entries to those shown below.

1. Record Purchase of System

Account No.	Account Description	Debit	Credit
105	Construction Work in Progress	\$25,000	
131	Cash		\$25,000

2. Close Project to Utility Plant

Account No.	Account Description	Debit	Credit
101	Utility Plant in Service	\$417,731	
108	Accumulated Depreciation (Assets Net of Depreciation)		\$366,000
114	Utility Plant Acquisition Adj.		\$16,731
105	Construction Work in Progress (Purchase Price + Other Acquisition Costs)		\$35,000

⁴ See, Ordering Paragraph No. 10.

3. Record Other Project Costs

Account No.	Account Description	Debit	Credit
105	Construction Work in Progress	\$162,000	
224	Line of Credit Borrowings (Equalization Tank and Sensaphone Autodialer)		\$162,000

4. Close Projects to Utility Plant

Account No.	Account Description	Debit	Credit
101	Utility Plant in Service	\$162,000	
105	Construction Work in Progress (Equalization Tank and Sensaphone Autodialer)		\$162,000

The \$25,000 purchase price and the additional capital improvement costs will be financed by internally generated funds, proceeds from the issuance of common stock under York Water-WW’s dividend reinvestment and direct and employee stock purchase plans, and, if necessary, borrowings against York Water-WW’s line of credit. York Water-WW estimated approximately \$10,000 in transaction closing costs, to be paid by operating cash. York Water-WW also stated that its provisional journal entries cannot be confirmed until an original cost study has been completed.

From September 2017 to August 2021, the DEP issued a series of Notices of Violation (NOVs) to MESCO. These NOVs were issued due to failure to submit a National Pollutant Discharge Elimination System (NPDES) permit renewal application, NPDES permit discharge and testing violations, and three sanitary sewer overflows. In MESCO’s CO&A with DEP, MESCO agreed to complete an evaluation of the WWTP and submit a schedule of planned corrective actions to DEP for its review and approval. In supplemental information filed with the Commission, York Water-WW confirmed that

it will take over responsibility for complying with MESCO's CO&A after closing on the transaction.

In supplemental information filed with the Commission, York Water-WW indicated that it plans to invest in equalization tank improvements and a Sensaphone autodialer at estimated costs of \$150,000 and \$12,000, respectively. York Water-WW also estimated that investigating inflow and infiltration will cost approximately \$45,000.

VI. PROPOSED RATES

A copy of a notice that York Water-WW sent to MESCO customers, dated May 31, 2023, was provided as the Joint Application's Exhibit N. The notice described the Purchase Agreement and the Joint Application and indicated that York Water-WW would charge rates equal to MESCO's current rates, although York Water-WW would change the billing interval from a quarterly basis to a monthly basis. MESCO currently bills customers a flat quarterly rate of \$132.61, and York Water-WW will bill MESCO customers \$44.20 monthly. The Joint Application also included as Exhibit K York Water-WW's *pro forma* tariff supplement, which set forth the proposed monthly rate.

York Water-WW provided an estimate of anticipated revenue and expenses for providing wastewater service in the requested service territory as the Joint Application's Exhibit L. Assuming 180 customers in the requested territory, York Water-WW estimated the annual revenue and expenses for providing wastewater service within the requested territory would be \$95,472 and \$57,330, respectively, resulting in an estimated annual net income of \$38,142.

VII. PERMITS, EASEMENTS, AND RIGHTS-OF-WAY REQUIRED

In supplemental information filed with the Commission, York Water-WW indicated that NPDES Permit No. PA0081361 and Water Quality Management (WQM) Permit Nos. 6796411 and 6788412 would be transferred from MESCO to York Water-WW. WQM Permit No. 6796411 was issued in June of 1997 and permitted the

construction of MESCO's pump station and additional mains. WQM Permit No. 6788412 was issued in August of 1988 and approved plans for construction of wastewater treatment facilities. York Water-WW averred that an additional request for permits was made with the DEP to search for any permits associated with MESCO and that DEP can only locate these permits, and that all relevant permits, including WQM permits, will be transferred as part of the transaction at the time of closing.

VIII. OPERATIONS UNDER YORK WATER

In the Joint Application, York Water-WW indicated that it would operate and manage the MESCO System as a standalone collection and treatment system. York Water-WW averred that they are not anticipating any physical, operational or managerial changes to York Water-WW's operations as a result of the acquisition. A copy of the operator's certificate for the certified operator York Water-WW intends to assign as the primary operator of the MESCO System was provided as Exhibit M of the Joint Application.

IX. LAND-USE PLANNING COMPLIANCE AND ACT 537 OFFICIAL SEWAGE FACILITIES PLANNING

York Water-WW provided a copy of the land use planning verification response letter it received from the Monaghan Township Planning Commission as the Joint Application's Exhibit J. The response letter was completed, signed and dated December 27, 2022, by the Monaghan Township Vice-Chairperson and indicated that the Joint Application is consistent with Monaghan Township's comprehensive plans and zoning ordinances. York Water-WW also provided a copy of a county land use letter, dated July 21, 2022, from the York County Planning Commission (YCPC) as the Joint Application's Exhibit I. The YCPC letter was completed and signed by a county planner and indicated that the Joint Application is consistent with applicable comprehensive plans and zoning ordinances. Considering that the county and municipality indicated that the Joint Application is consistent with the applicable comprehensive plans and that the existing

MESCO certificated territory consists only of the Memphord Estates residential subdivision and York Water-WW averred this subdivision is built out, Act 537 Official Sewage Facilities Planning does not appear to be an issue.

X. OTHER CONSIDERATIONS

York Water-WW averred that no corporation or entity, except MESCO, is now furnishing or has corporate or franchise rights to furnish wastewater service within the requested territory and that approval of the Joint Application would not create a competitive condition. The Joint Application indicated that the MESCO assets are part of an estate that must be closed, and that the executors are neither interested nor capable of continuing to provide wastewater service. Additionally, York Water-WW noted that it will bring significant resources to the MESCO System to keep it in compliance with regulatory requirements.

York Water-WW has no outstanding fines or assessments due to the Commission. Additionally, York Water-WW is also current with its annual and quarterly reports and the Commission's security planning and readiness report filing requirements. Through Commission correspondence with DEP Southcentral Regional Office, it was determined that DEP does not have any relevant pending actions or outstanding complaints against York Water-WW. In supplemental information filed with the Commission, York Water-WW confirmed that it will take over responsibility for complying with MESCO's CO&A after closing on the transaction.

XI. CONCLUSION

Based upon the facts that there is a need to continue to make wastewater service available within the requested territory; that York Water-WW will expand its service territory to customers in compliance with Commission regulations; and that York Water-WW is fit to provide service, the Commission finds that granting approval of the Joint

Application is necessary or proper for the service, accommodation, convenience or safety of the public and in the public interest; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Application of The York Water Company-Wastewater and MESCO, Inc. at Docket Nos. A-2023-3041009 and A-2023-3041010, is hereby approved, consistent with this Order.

2. That a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of MESCO, Inc. to sell its wastewater system assets to The York Water Company-Wastewater, as described in the Joint Application.

3. That a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of The York Water Company-Wastewater to acquire the wastewater system assets owned by MESCO, Inc, as described in the Joint Application.

4. That The York Water Company-Wastewater shall provide written notification to the Secretary's Bureau within ten (10) days of closing with MESCO, Inc., at Docket Nos. A-2023-3041009 and A-2023-3041010.

5. That following Commission receipt of the notice of closing as required in Ordering Paragraph 4, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(1)(i) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(1)(i), evidencing Commission approval of the right of The York Water Company-Wastewater to begin to offer, render, furnish and supply wastewater service to the public in a portion of Monaghan Township, York County, Pennsylvania.

6. That within ten (10) days following the date of closing with MESCO, Inc., The York Water Company-Wastewater shall file a tariff supplement with the Secretary's

Bureau at Docket No. A-2023-3041009, to become effective on one day's notice, that is consistent with the *pro forma* tariff supplement provided in the Joint Application.

7. That following Commission receipt of the notice of closing as required in Ordering Paragraph 4, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(2) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(2), evidencing Commission approval of the right of MESCO, Inc. to abandon wastewater service to the public in Monaghan Township, York County, Pennsylvania.

8. That upon the issuance of the Certificate of Public Convenience pursuant to Ordering Paragraph 7, MESCO, Inc. shall return all copies of previously issued Certificates of Public Convenience to the Commission's Secretary's Bureau; be removed from all active utility lists maintained by the Commission's Secretary's Bureau and the Bureau of Administrative Services; and MESCO Inc.'s tariff shall become null and void and will be removed from the Commission's active files.

9. That The York Water Company-Wastewater shall file a copy of its original cost study of the wastewater system assets acquired from MESCO, Inc. with the Secretary's Bureau at Docket No. A-2023-3041009, with notice to the Bureau of Technical Utility Services, the Bureau of Audits, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate upon completion of said study.

10. That, at the time of filing its next base rate case which proposes to include the assets of this acquisition in rate base, The York Water Company-Wastewater shall provide testimony that specifically references Docket No. A-2023-3041009 and that justifies any amount claimed in rate base in order to evaluate the reasonableness of the original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Public Utility Code, 66 Pa.C.S. § 1327.

11. That if The York Water Company-Wastewater determines that the transaction will not occur, it will promptly file notice of such determination with the Secretary's Bureau at Docket Nos. A-2023-3041009 and A-2023-3041010 and return the Certificate of Public Convenience issued in Ordering Paragraph 3.

12. That if MESCO Inc. determines that the transaction will not occur, it will promptly file notice of such determination with the Secretary's Bureau at Docket Nos. A-2023-3041009 and A-2023-3041010 and return the Certificate of Public Convenience issued in Ordering Paragraph 2.

13. That nothing herein shall be construed as an approval or determination of costs or expenses for the purposes of just or reasonable rates or to exempt The York Water Company-Wastewater from obtaining all necessary permits, licenses, and approvals from other federal, state, and local government agencies having jurisdiction.

14. That a copy of this Order be served upon The York Water Company-Wastewater, MESCO, Inc., the Commission's Bureau of Audits, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Monaghan Township Board of Supervisors, the Monaghan Township Planning Commission, the York County Commissioners, the York County Planning Commission, the Pennsylvania Department of Revenue's Bureau of Corporate Taxes, and the Department of Environmental Protection – Southcentral Regional Office and its Bureau of Regulatory Counsel.

15. That upon the issuance of the Certificates of Public Convenience as outlined in Ordering Paragraphs 5 and 7, or upon the return of either of the Certificates of Public Convenience issued in Ordering Paragraphs 2 or 3, the proceeding at Docket Nos. A-2023-3041009 and A-2023-3041010 be closed.

BY THE COMMISSION,

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 18, 2024

ORDER ENTERED: January 18, 2024