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January 29, 2024

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 Intervenor Allegheny County Sanitary Authority's Reply to the Exceptions of Pennsylvania-American Water Company and Borough of Brentwood. 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 :

INTERVENOR ALLEGHENY COUNTY SANITARY AUTHORITY
REPLY TO THE EXCEPTIONS OF PENNSYLVANIA-AMERICAN WATER
COMPANY AND BOROUGH OF BRENTWOOD

I. INTRODUCTION

On January 17, 2024, the Public Utility Commission (“Commission”) issued the Recommended Decision (“Recommended Decision”) of Administrative Law Judge Katrina L. Dunderdale in this proceeding. The Recommended Decision denied Pennsylvania-American Water Company’s (“PAWC”) application (“Application”) for the Commission’s approval to acquire substantially all of the assets, properties and rights related to the wastewater collection system (“System”) owned by the Borough of Brentwood (“Brentwood”). On January 25, 2024, PAWC and Brentwood filed Exceptions (collectively, “Exceptions”) to the Recommended Decision.

Intervenor, Allegheny County Sanitary Authority (“ALCOSAN”) does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application. In the event that the Commission approves the Application, ALCOSAN now files this Reply to the Exceptions.

II. REPLY TO EXCEPTIONS

ALCOSAN does not take a position either in opposition to or in support of the proposed transaction that is the subject of the Application. In the event the Commission approves the Application, however, ALCOSAN’s status and rights as the exclusive provider of wastewater treatment and conveyance services in its service area must be preserved and ALCOSAN must be able to continue to meet all obligations related to the same. Accordingly, ALCOSAN presented record evidence establishing the essential role of the Z Agreement and, if the Application is approved, the need for preserving the uniformity, enforceability, and not amending or assigning the Z Agreement and the Other Z Agreements. ALCOSAN also presented record evidence establishing the critical role of the Cooperation Agreement to ensure the continued enforcement

of the Z Agreement and the Other Z Agreements upon PAWC's acquisition of the System, in the event the Application is approved.

In the interest of economy, and because ALCOSAN treated the topic of the Z Agreement and the Other Z Agreements thoroughly in its Main Brief, ALCOSAN respectfully incorporates herein by reference its Main Brief and urges the Commission to fully consider the crucial role the Z Agreement and the Other Z Agreements play in supporting the very costly regulatory obligations being shared by all ALCOSAN member municipalities, including Brentwood.

The Recommended Decision did not give full treatment to the operation of the Z Agreement and the Other Z Agreements. These essential, foundational system agreements need to be carefully integrated into the PAWC-Brentwood transaction, if such were to be approved by the Commission. The Cooperation Agreement was arrived at after careful consideration by ALCOSAN, Brentwood, and PAWC and it should be approved without modification should the Commission grant PAWC's Application.

The Board of ALCOSAN respectfully requests, in the strongest terms, that the Commission use great care with its treatment of the Cooperation Agreement, the Z Agreement, and Other Z Agreements if PAWC's Application is considered for approval. Many communities, customers, regulators, contractors, lenders, and leaders rely on the continuing and unmodified operation of the Z Agreements to ensure that billion-dollar capital expenditures are responsibly financed across ALCOSAN's system.

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.

Likewise, in their Main Briefs, PAWC, Brentwood, and the Office of Consumer Advocate ("OCA") all support ALCOSAN's position that the Z Agreements and Other Z Agreements must be preserved. Brentwood Main Brief at p. 25; PAWC Main Brief at p. 44; OCA Main Brief at p. 53. PAWC again reiterates its support for the preservation and uniformity of the Z Agreement and the Other Z Agreements in its Exceptions. PAWC Exceptions at p. 33.

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). While the Recommended Decision did not fully rule upon the issues pertaining to the Cooperation Agreement, the Z Agreement, and the Other Z Agreements, the Commission must do so if it elects to grant PAWC's Application.

If PAWC's Application is denied, ALCOSAN's interests should be unaffected. If, however, the Commission grants PAWC's Application, the approval must address the Z

Agreements and the Cooperation Agreement in a depth not fully addressed by the Recommended Decision.

III. CONCLUSION

ALCOSAN therefore respectfully requests that, should the Commission approve the Application, 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, fulfilling 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.

As set out in ALCOSAN’s Main Brief, incorporated herein, these conditions are necessary to ensure that ALCOSAN can continue in its 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.

Respectfully submitted,

Dated: January 29, 2024

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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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Dated: January 29, 2024

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