



COMMONWEALTH OF PENNSYLVANIA

July 10, 2024

E-FILED

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

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 the East Dunkard Water Authority's assets, properties and rights related to its water system to Pennsylvania-American Water Company, and (2) the right of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in Dunkard, and portions of Monongahela, Greene, Cumberland, Perry, and Whiteley Townships, all in Greene County, Pennsylvania / Docket No. A-2024-3049759

Dear Secretary Chiavetta:

Enclosed please find the Protest, Notice of Intervention, Public Statement and Verification, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Rebecca Lyttle

Rebecca Lyttle
Assistant Small Business Advocate
Attorney ID No. 201399

Enclosures

cc: Kevin Higgins
Parties of Record

2. Representing the OSBA in this proceeding is:

Rebecca Lyttle, Esq.
Assistant Small Business Advocate
Office of Small Business Advocate
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3. The Pennsylvania-American Water Company's Application was filed with the Pennsylvania Public Utility Commission ("PUC") on June 21, 2024 and its Amended Application that was filed with the PUC on July 2, 2024, under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the East Dunkard Water Authority's ("EDWA") assets, properties and rights related to its water system to Pennsylvania-American Water Company for \$5,000,000, and (2) the right of Pennsylvania- American Water Company to begin to offer or furnish water service to the public in Dunkard, and portions of Monongahela, Greene, Cumberland, Perry, and Whiteley Townships, all in Greene County, Pennsylvania. PAWC further requests, pursuant to Code Section 507, 66 Pa. C.S. § 507, the issuance of Certificates of Filing for approvals for the following agreement, as amended between PAWC and a municipal corporation: Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of July 23, 2023, including the First Amendment dated as of November 3, 2023, Second Amendment dated as of January 25, 2024, and Third Amendment dated June 13, 2024.

4. EDWA is a municipal authority established on December 6, 2010, under the laws of the Commonwealth of Pennsylvania. It furnishes water service to approximately 1,593

customers. PAWC is currently the Receiver of EDWA, as authorized by the Commission by Order dated November 1, 2023 following a Joint Application by PAWC and the Pennsylvania Department of Environmental Protection (“PADEP” or the “Department”) at Docket No. P2023-3043950 (“PUC Receivership Proceeding”), and upon having been appointed as such by the Pennsylvania Commonwealth Court (“Commonwealth Court”) by Order dated February 8, 2024, Docket Nos. 557 MD 2022 and 490 ND 2023 (consolidated) (“Commonwealth Court Receivership Proceeding”).

5. Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience when a wastewater system is being acquired (upon agreement of the acquiring and selling utilities), to establish a fair market value of the selling utility by utilizing the list of utility valuation experts maintained by the Commission, and to require the acquiring utility to submit to the Commission the following information when acquiring a wastewater system prior to the Commission’s decision to approve or deny the proposed acquisition of a public utility and issue a certificate of public convenience:

- (i) Copies of the two appraisals performed by the utility valuation experts under §1329(a) of the Public Utility Code, 66 Pa. C.S. §1329(a).
- (ii) The purchase price of the selling utility as agreed to by the acquiring public that will be included in its rate base.
- (iii) The ratemaking rate base determined pursuant to §1329(c) of the Public Utility Code, 66 Pa. C.S. §1329(c).
- (iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.

(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

§1329(d) of the Public Utility Code, 66 Pa. C.S. §1329(d).

6. When a certificate of public convenience is required under Section 1102, Section 1103(a) of the Public Utility Code, 66 Pa. C.S. §1103(a), allows the Commission to issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed acquisition would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

7. The Application raises issues of concern that may require the Commission to reject the proposed transaction or to approve it only after imposing conditions. Of particular concern is whether the transaction would unreasonably increase the water and wastewater rates of the EDWA, as well as provide payment protections for the small business customers of the EDWA.

8. The OSBA reserves the right to raise additional issues as they arise throughout this proceeding.

WHEREFORE, the OSBA respectfully requests that the Commission reject the Application as filed.

In the alternative, the OSBA respectfully requests that the Commission conduct a full investigation, including evidentiary hearings, into the Application.

Respectfully submitted,

/s/ Rebecca Lyttle

Rebecca Lyttle
Assistant Small Business Advocate
Attorney I.D. No. 201399

For: NazAarah Sabree
Small Business Advocate

Commonwealth of Pennsylvania
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Date: July 10, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	Docket No. A-2024-3049759
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 the	:	
East Dunkard Water Authority’s assets,	:	
properties and rights related to its water	:	
system to Pennsylvania-American Water	:	
Company, and (2) the right of	:	
Pennsylvania-American Water Company	:	
to begin to offer or furnish water service	:	
to the public in Dunkard, and portions of	:	
Monongahela, Greene, Cumberland,	:	
Perry, and Whiteley Townships, all in	:	
Greene County, Pennsylvania	:	

**NOTICE OF INTERVENTION
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention with respect to the above-captioned Application that was filed with the Pennsylvania Public Utility Commission (“PUC”) on June 21, 2024, and its Amended Application that was filed with the PUC on July 2, 2024. In support of this Notice of Intervention, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.

2. Representing the OSBA in this proceeding is:

Rebecca Lyttle, Esq.
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Respectfully submitted,

/s/ Rebecca Lyttle
Rebecca Lyttle
Assistant Small Business Advocate
Attorney I.D. No. 201399

For: NazAarah Sabree
Small Business Advocate

Commonwealth of Pennsylvania
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Date: July 10, 2024

PUC on July 2, 2024, under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the East Dunkard Water Authority's assets, properties and rights related to its water system to Pennsylvania-American Water Company, and (2) the right of Pennsylvania- American Water Company to begin to offer or furnish water service to the public in Dunkard, and portions of Monongahela, Greene, Cumberland, Perry, and Whiteley Townships, all in Greene County, Pennsylvania. PAWC further requests, pursuant to Code Section 507, 66 Pa. C.S. § 507, the issuance of Certificates of Filing for approvals for the following agreement, as amended between PAWC and a municipal corporation: Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of July 23, 2023, including the First Amendment dated as of November 3, 2023, Second Amendment dated as of January 25, 2024, and Third Amendment dated June 13, 2024.

The Small Business Advocate is intervening in this proceeding in order to protect the interests of the East Dunkard Water Authority's small business customers. A thorough inquiry by the Commission into all the elements of the Application is necessary to ascertain whether it conforms to the Public Utility Code and to the Commission's regulations.

In view of the foregoing, the Small Business Advocate is requesting that the Application be either denied or subject to investigation and evidentiary hearings before the Commission. The Small Business Advocate will ask the Commission to deny or modify any aspect of the Joint Application that is not proven to be just, reasonable, non-discriminatory, and fully in accordance with the Public Utility Code and the Commission's regulations.

Dated: July 9, 2024

VERIFICATION

I, NazAarah Sabree, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: July 10, 2024



(Signature)

Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
elizabeth.triscari@amwater.com

DATE: July 10, 2024

/s/ Rebecca Lyttle
Rebecca Lyttle
Assistant Small Business Advocate
Attorney I.D. No. 201399