



Teresa K. Harrold
Director, Corporate Counsel
852 Wesley Drive | Mechanicsburg, PA 17055
Phone: 717-550-1562 | Fax: 717-550-1255
teresa.harrold@amwater.com

VIA eFiling

August 30, 2024

Rosemary Chiavetta, Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company for Approval of (1) the Right to Offer, Render, Furnish or Supply Water Service to the Public in a Portion of Dimock Township, Susquehanna County, Pennsylvania Pursuant to Section 1102 of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102; (2) the Offsite Development Marketing Agreement by and between Pennsylvania-American Water Company and the Office of the Attorney General Pursuant to Rule 23.2 of Pennsylvania-American Water Company's Tariff Water-PA P.U.C. No. 5; and (3) approve, as necessary, the limited waivers of Pennsylvania-American Water Company's Tariff Water-PA P.U.C. No. 5

Docket No. A-2023-3043501

Dear Secretary Chiavetta:

In response to the Commission's Order entered January 18, 2024, Ordering Paragraph 9, Pennsylvania-American Water Company is filing with Secretary's Bureau an executed copy of the Off-Site Development Marketing Agreement that was previously provided as an unsigned Exhibit D to the Application.

If you have any questions, please contact me.

Sincerely,

Teresa K. Harrold

Enclosure

OFF-SITE DEVELOPMENT MARKETING AGREEMENT

AGREEMENT made this 31st day of July, ~~2023~~, ²⁰²⁴, by and between **Pennsylvania-American Water Company**, a Pennsylvania corporation with a business address of 852 Wesley Drive, Mechanicsburg, Pennsylvania, 17055 (hereinafter referred to as "PAWC" or "COMPANY") and the **Commonwealth of Pennsylvania, Office of Attorney General** (hereinafter referred to as "OAG" and, together with PAWC, the "Parties");

WITNESSETH:

WHEREAS, on November 29, 2022, the Court of Common Pleas of Susquehanna County issued a sentencing order in the Case of the Commonwealth of Pennsylvania v. Coterra Energy, Inc. ("Sentencing Order"), which is attached and incorporated herein as Exhibit B;

WHEREAS, the Sentencing Order required Coterra Energy, Inc. to pay \$16.29 million to be utilized, in part, for the construction of a public groundwater system ("System") by PAWC in Dimock Township, Susquehanna County, Pennsylvania and to create a \$50,000 credit for each affected landowner;

WHEREAS, Coterra Energy, Inc. transferred \$16.29 million to the OAG which was placed into an escrow account ("Escrow Account") to be utilized in accordance with the Sentencing Order; and

WHEREAS, COMPANY is a public utility engaged in the business of furnishing water service to the public in various areas of Pennsylvania, including Susquehanna County, subject to the jurisdiction of the Pennsylvania Public Utility Commission (hereinafter referred to as "COMMISSION"); and

WHEREAS, the Parties desire to enter into this AGREEMENT to set forth the terms and conditions related to construction of the System.

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter contained and for other good and valuable consideration, the mutual receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation. The foregoing recitals or “Whereas” clauses are incorporated herein by reference.
2. Water Facilities Improvements. The “Water Facilities Improvements” means the water supply, treatment, and distribution facilities as shown and described in Exhibit A, attached hereto and made a part hereof. The Parties recognize that Exhibit A is a preliminary representation of where the Water Facilities Improvements will be located and the location of such Water Facilities Improvements and the extent of the Water Facilities Improvements may change in the final design and as construction occurs in the field.
3. Permits and Approvals. PAWC shall obtain all requisite permits, zoning, and other approvals for the construction of the Water Facilities Improvements. Construction of the Water Facilities Improvements shall not commence until all necessary permits are obtained.
4. Construction Responsibility. PAWC shall construct and install or cause to be constructed and installed the Water Facilities Improvements. All construction shall be done in a good and workmanlike manner and shall comply at the time of completion with all applicable laws and requirements of the governmental authorities having jurisdiction.
5. Payment Schedule. OAG hereby agrees to pay PAWC out of the Escrow Account in accordance with the payment schedule outlined in this Paragraph below. As of the Effective Date of this Agreement, the Estimated Cost for the System is \$11,043,665. The Estimated Cost shall be the estimated cost of the Water Facilities Improvements, and shall be subject to adjustment, which may include any other additional facilities which PAWC shall have decided are required to render adequate

potable water service. The Parties understand that the aforementioned costs are estimates and that the actual costs of the Water Facilities Improvements are subject to change and recognize that the costs could change. If PAWC determines, at any time from the execution of this Agreement and the completion of the construction of the Water Facilities Improvements, that the actual cost will be higher than the Estimated Cost, PAWC will contact OAG and inform OAG of the increase in the actual costs. PAWC will agree to accept payments at key milestones throughout the project as identified below.

1. \$1,105,000 Engineering (Design & Permitting), paid by OAG to PAWC prior to execution of this AGREEMENT
 2. \$1,065,000 On the Effective Date of this AGREEMENT
 3. \$8,873,665 Upon Receipt of Construction Bids, due within 30 days of PAWC notice
- TOTAL: \$11,043,665

Should OAG not make a payment in accordance with the foregoing schedule, PAWC has the right to discontinue its work.

6. Preliminary and Final Memorandum. A Preliminary Memorandum in the form attached shall be prepared and signed by both Parties showing the payments required in accordance with foregoing provisions. The Parties also agree to the procedure set forth in Paragraph 5 for an interim adjustment if PAWC determines that the actual costs will exceed the Estimated Cost. Notwithstanding any adjustment after the completion of the Preliminary Memorandum, upon completion of the Water Facilities Improvements, a Final Memorandum in the form attached shall be prepared and signed by both Parties showing the payments required based on the same calculation as set forth above, but by using the actual cost of the Water Facilities Improvements, including the actual installation cost of the mains and other facilities. If the payments shown to be due on the Final Memorandum differ from that shown on the Preliminary Memorandum and any interim adjustment,

OAG will pay the additional amount to PAWC out of the Escrow Account or PAWC will refund to OAG any excess amount shown to have been paid, it being the intent of this Agreement that the payments required shall be based on PAWC's actual construction costs and the additional payment described in Paragraph 8 equalling up to \$16.29 million.

7. Operation and Ownership. The ownership of the Water Facilities Improvements installed hereunder shall at all times be by PAWC, its successors and assigns. PAWC will therefore own, operate, maintain, repair, and replace the Water Facilities Improvements as needed. PAWC will also install service lines and behind-the-meter facilities on behalf of customers. Post-installation, ownership and maintenance of these service lines and facilities will be transferred to the customers and remain the responsibility of current and future property owners. The OAG shall not be responsible for any costs associated with this Paragraph 7.

8. Tariff Rates. It is mutually understood and agreed that the charges for water service for the new groundwater system shall be at the applicable rates of PAWC on file with the COMMISSION, which rates are subject to change from time to time upon application of PAWC and as approved by the COMMISSION. At the time of Final Memorandum is executed, OAG will make a lump sum payment to PAWC of \$1.05 million dollars, which will be credited in the amount of \$50,000 each to the water bills of the Dimock service addresses identified in Exhibit C, so that their monthly bills show an amount due of \$0.00 until all funds from this payment are exhausted ("Bill Credits"). This \$1.05 million payment will be in addition to PAWC's construction costs described in Paragraph 5. PAWC will propose changes to its tariff on file with the COMMISSION to reflect this billing methodology.

9. PAWC Interruptions and Delays in Service. PAWC shall use commercially reasonable efforts to maintain satisfactory and continuous service, but does not guarantee a continuous

supply of potable water service. Neither party will incur any liability to the other if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

10. Waiver. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provisions but the same shall, nevertheless, be and remain in full force and effect.

11. Notice to OAG. Communications hereunder shall be sent to OAG, addressed as follows:

Rebecca Franz
Chief Deputy Attorney General
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Or to such other address as OAG may advise PAWC in writing.

12. Notice to PAWC. Communications hereunder shall be sent to PAWC, addressed as follows:

Jeremy Nelson
Pennsylvania-American Water Company
2699 Stafford Avenue
Scranton, PA 18505

With a required copy to:
Legal Department
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Or to such other address as PAWC may advise OAG in writing.

13. No Agency. It is agreed that PAWC is not an agent of OAG and shall not incur any costs or expenses on behalf of OAG, and that OAG is not an agent of PAWC and shall not incur any cost or expenses on behalf of PAWC.

14. Entire Agreement. This Agreement represents the entire understanding between the Parties with respect to the subject matter herein and those which are reasonably related; there are no oral or collateral agreements with respect thereto between the Parties. All changes or amendments to this Agreement must be in writing and signed by the Parties in order to be enforceable.

15. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. However, neither Party shall assign its rights, obligations, and interests in this Agreement without prior written notice to and the written approval from the other Party.

17. Pennsylvania Public Utility Commission Approval. This Agreement requires the approval of the COMMISSION to become effective. The Effective Date of this Agreement is the date the COMMISSION approves this Agreement.

18. Pennsylvania Department of Environmental Protection ("PaDEP"). PAWC's obligation to construct and install the Water Facilities Improvements and PAWC's obligation to own and operate the Water Facilities Improvements are conditioned on PaDEP issuing any necessary permits and approvals to PAWC.

19. No Third Party Beneficiaries. Nothing herein expressed or implied is or should be construed to confer upon or give any person other than the Parties and their successors and permitted assigns any rights or remedies under or by reasons of this Agreement.

20. Conditions Precedent to any PAWC Obligation. Any and all obligations of PAWC arising from this Agreement are expressly subject to the following conditions precedent: (i) the receipt by PAWC of the payments by OAG in accordance with Paragraph 5 above for the Water Facilities Improvements and Paragraph 8 for the Bill Credits; and (ii) Receipt by PAWC of all regulatory approvals and permits required for the construction and operation of the Water Facility Improvements.

21. Commonwealth Held Harmless.

a.) PAWC shall indemnify the OAG against any and all third party claims, demands, and actions based upon or arising out of any activities performed by PAWC and its employees and agents under this Agreement, provided the OAG gives PAWC prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the OAG has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to PAWC, the OAG will cooperate with all reasonable requests of PAWC made in the defense of such suits.

b.) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The OAG may, in its sole discretion, allow PAWC to control the defense and any related settlement negotiations.

22. OAG Obligations. PAWC acknowledges that the Escrow Account is solely funded pursuant to the Sentencing Order and that the OAG is only obligated to make payments from the

Escrow Account in accordance with the Sentencing Order up to the maximum amount permitted thereunder. OAG shall not be liable for any amounts exceeding the Escrow Account balance.

23. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

24. Headlines. The headings preceding the text of the Paragraphs hereof are inserted solely for convenience or reference, and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

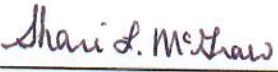
PENNSYLVANIA-AMERICAN WATER
COMPANY

By: 

Witness

By: 

OFFICE OF ATTORNEY GENERAL

By: 

Witness

By: Anthony Bowers
Digitally signed by Anthony Bowers
DN: cn=Anthony Bowers, o=Office of Attorney
General, ou=Operations Division,
email=abowers@attorneygeneral.gov, c=US
Date: 2024.07.29 08:11:05 -0400

For Form and Legality:

Amy M. Elliott
Digitally signed by Amy M. Elliott
DN: cn=Amy M. Elliott, o=Pennsylvania Office of
Attorney General, ou=Chief Deputy Attorney
General, email=elliott@attorneygeneral.gov, c=US
Date: 2024.07.29 09:56:35 -0400

Office of Attorney General Date
Legal Review Section

For Budget:

Dorean Rooney
Digitally signed by Dorean Rooney
DN: cn=Dorean Rooney, o=Finance, ou=Finance,
email=drooney@attorneygeneral.gov, c=US
Date: 2024.07.31 10:19:54 -0400

Dorean Rooney Date
Director of Finance

Work Order No.

PRELIMINARY MEMORANDUM

This Preliminary Memorandum is executed by the parties hereto under and pursuant to the provisions of Paragraph 5 of a certain agreement in writing between the parties entered into on the day of _____, 20____, for the installation by PAWC of the Water Facilities Improvements therein described. It is, therefore, agreed and stipulated:

(a) Total Estimated Cost – Design & Permitting	\$1,105,000
(b) Total Estimated Cost – Construction	\$9,938,665
(c) Total Estimated Cost (a+b)	\$11,043,665
(d) Less: Initial Deposit – Design & Permitting	\$1,105,000
(e) OAG Payment (c) minus (d)	<u>\$9,938,665</u>

This Preliminary Memorandum shall be attached to the original AGREEMENT in accordance with the provisions of Paragraph 5 thereof.

Dated: _____

Date of Deposit: _____

WITNESS:

PENNSYLVANIA-AMERICAN WATER COMPANY

By: Judy Hobbins

By: [Signature]

WITNESS:

OFFICE OF ATTORNEY GENERAL

By: _____

By: Shari L. McThaw

Work Order No.

FINAL MEMORANDUM

This Final Memorandum is executed by the parties hereto under and pursuant to the provisions of Paragraph 5 of a certain agreement in writing between the parties entered into on the ___ day of , 20___, for the installation by PAWC of the Water Facilities Improvements therein described. It is, therefore, agreed and stipulated:

(a) Total Actual Cost – Design & Permitting	\$
(b) Total Actual Cost – Construction	\$
(c) Total Actual Cost (a+b)	\$
(d) Less: OAG Payments	\$
(e) Final OAG Payment Due/Owed (c) minus (d)	\$

This Final Memorandum shall be attached to the original agreement in accordance with the provisions of Paragraph 5 thereof.

Dated: _____

Date of Deposit: _____

WITNESS:

PENNSYLVANIA-AMERICAN WATER COMPANY

By: _____

By: _____

WITNESS:

OFFICE OF ATTORNEY GENERAL

By: _____

By: _____

Exhibit A

Water Facilities Improvements

The water facilities improvements consist of a new stand-alone groundwater system to serve the affected landowners. The new system would include two (2) new groundwater wells (one primary and one back up) with associated treatment, control and distribution facilities.

Approximately 37,000 LF of distribution main will be needed depending on the final well locations. In addition, PAWC is upgrading its billing system to allow it to administer \$50,000 credits to eligible customers of the new system. The map immediately following this exhibit show the proposed location and configuration of the water distribution system loop.

COMMONWEALTH : IN THE COURT OF COMMON PLEAS
VS. : SUSQUEHANNA COUNTY, PENNA.
: NO. 2022-15-CR
: CHARGE, COUNT 1, PROHIBITION AGAINST
COTERRA ENERGY INC. : DISCHARGE OF INDUSTRIAL WASTES
: PLEA: GUILTY

S E N T E N C E

2022 NOV 30 PM 4:16
PROthonary
CLERK OF COURTS

NOW TO WIT this 29th day of November, 2022, the sentence of the court is that you, Coterra Energy Inc., pay a fine in the amount of \$2,500.00 to the Clean Water Fund at the Pennsylvania Department of Environmental Protection.


The Defendant will pay \$16.29 million to an interest bearing account established by the Office of Attorney General. This money shall be utilized for the construction of a community water well system and water distribution system constructed and operated by Pennsylvania American Water Company. A portion of the Defendant's one-time payment shall be utilized to connect certain landowners' residences to the waterline and to create a \$50,000.00 credit for each landowner to serve as payment for their water for approximately 75 years. Any remaining funds shall be used to connect other homeowners in the vicinity of the water line and to support water quality improvement projects in the affected area.

During the construction of the waterline, the Defendant shall offer certain landowners treatment systems to treat their

water and bottled water. The Defendant shall install and maintain those systems on the residences that accept the treatment system. The cost of said treatment systems, their maintenance and operation, and the bottled water deliveries will be reimbursed from the \$16.29 million. Should the amount spent for interim treatment deplete the escrow account to a level that will not cover the cost of construction of the line, the Defendant will add back to the escrow account an amount up to that which was spent on interim treatment.

If the Community water well system is unable to be completed for any reason, the Defendant shall submit to the Pennsylvania DEP a plan for the operation and maintenance of the interim treatment systems for a period of 30 years. This plan will not require the delivery of bottled water. Should a landowner elect not to accept the installation or utilize a treatment system under this scenario, the Defendant's obligation related to that landowner shall be deemed satisfied. The funding for this alternative shall be paid from the \$16.29 million escrow account referenced above.

BY THE COURT:



Jason J. Legg, P.J.

2014 NOV 30 PM 4:14
PROF. CLERK OF COURTS

EXHIBIT C
IMPACTED CUSTOMERS SERVICE ADDRESSES¹

ID	Parcel Number	Parcel Address
1	200.00-1,001.02,000.	652 CARTER RD
2	200.00-1,012.00,000.	1965 MESHOPPEN CREEK RD
3	200.00-1,012.00,001.	2051 MESHOPPEN CREEK RD
4	200.00-1,013.00,000.	1664 MESHOPPEN CREEK RD
5	200.00-1,032.00,000.	11361 STATE ROUTE 3023
6	200.00-1,039.00,000.	11081 STATE ROUTE 3023
7	200.00-1,045.00,000.	1669 MESHOPPEN CREEK RD
8	181.00-1,016.00,000.	2365 MESHOPPEN CREEK ROAD
9	181.00-1,052.00,000.	2531 MESHOPPEN CREEK ROAD
10	200.00-1,001.01,000.	735 CARTER RD
11	200.00-1,011.04,000.	1576 MESHOPPEN CREEK RD
12	200.00-1,033.00,000.	11333 STATE ROUTE 3023
13	200.00-1,006.00,000.	44 CARTER RD
14	200.00-1,003.00,001.	120 CARTER RD
15	200.00-1,047.00,000.	18 CARTER RD
16	181.00-1,042.00,000.	1059 CARTER RD
17	200.00-1,040.00,000.	10894 STATE ROUTE 3023
18	200.00-1,008.00,000.	644 CARTER RD
19	200.00-1,038.00,000.	11265 STATE ROUTE 3023
20	200.00-1,033.00,000.	249 Meshoppen Creek Rd
21	200.00-1,052.00	1640 MESHOPPEN CREEK RD

¹ The Bill Credits will attach to service addresses rather than customers. In other words, if a customer moves from a Dimock service address listed on Exhibit C, that customer will no longer be eligible to receive funds from the Bill Credit associated with the Dimock service address. Instead, the new customer residing at the Dimock service address will begin receiving the funds from the Bill Credit.