

COMMONWEALTH OF PENNSYLVANIA



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June 2, 2025

Via Electronic Filing

Matthew L. Homsher, Secretary
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, 66 Pa C.S. §§ 1102(a) and 1329, for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater treatment plant and collection system owned and operated by the Elizabeth Borough Municipal Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of Elizabeth, and portions of the Borough of Lincoln, and the Townships of Elizabeth and Forward, in Allegheny County, Pennsylvania; Docket No. A-2025-3052983

Dear Secretary Homsher:

Attached for electronic filing, please find enclosed a copy of Prehearing Memorandum submitted on behalf of the Office of Consumer Advocate in this proceeding.

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
June 2, 2025
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Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby, Esq.
Senior Assistant Consumer Advocate
PA Attorney I.D. # 85824
CAppleby@paoca.org

Enclosures

cc: Administrative Law Judge Erin L. Gannon (Email Only: egannon@pa.gov)
Administrative Law Judge Steven K. Haas (Email Only: sthaas@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

In re: Application of Pennsylvania- :
American Water Company under Sections : Docket No. A-2025-3052983
1102(a) and 1329 of the Pennsylvania :
Public Utility Code, 66 Pa C.S. § § :
1102(a) and 1329, for approval of (1) the :
transfer, by sale, to Pennsylvania- :
American Water Company, of :
substantially all of the assets, properties :
and rights related to the wastewater :
treatment plant and collection :
system owned and operated by the :
Elizabeth Borough Municipal Authority, :
(2) the rights of Pennsylvania- American :
Water Company to begin to offer or :
furnish wastewater service to the public in :
the Borough of Elizabeth, and portions of :
the Borough of Lincoln, and the :
Townships of Elizabeth and Forward, in :
Allegheny County, Pennsylvania :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Prehearing Memorandum, 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.

Dated this 2nd day of June 2025.

SERVICE BY E-MAIL ONLY

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Dated: June 2, 2025

/s/ Christy M. Appleby

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Katie Kennedy, Esq.
Assistant Consumer Advocate
PA Attorney I.D. # 317237
Email: KKennedy@paoca.org
Email: OCAEBMA1329@paoca.org

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American	:	
Water Company under Sections 1102(a) and	:	
1329 of the Pennsylvania Public Utility	:	Docket No. A-2022-3033138
Code, 66 Pa C.S. § § 1102(a) and 1329, for	:	
approval of (1) the transfer, by sale, to	:	
Pennsylvania-American Water Company, of	:	
substantially all of the assets, properties and	:	
rights related to the wastewater treatment	:	
plant and collection system owned and	:	
operated by the Elizabeth Borough	:	
Municipal Authority, (2) the rights of	:	
Pennsylvania-American Water Company to	:	
begin to offer or furnish wastewater service	:	
to the public in the Borough of Elizabeth,	:	
and portions of the Borough of Lincoln, and	:	
the Townships of Elizabeth and Forward, in	:	
Allegheny County, Pennsylvania	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, the Commission’s regulations at 52 Pa. Code Sections 5.221-5.224, and in response to the May 12, 2025, Prehearing Conference Order issued by the Honorable Administrative Law Judge (ALJ) Erin L. Gannon and Steven K. Haas of the Office of Administrative Law Judge (OALJ) of the Pennsylvania Public Utility Commission (Commission), in the captioned proceeding, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

On January 28, 2025, Pennsylvania-American Water Company (PAWC or Company) filed an Application requesting that the Commission: (1) approve consistent with the provisions of 66 Pa. C.S §§ 1102 and 1103, the acquisition of the wastewater system assets owned by Elizabeth Borough Municipal Authority (EBMA); (2) approve the right of PAWC to provide wastewater service in the Borough of Elizabeth, and portions of the Borough of Lincoln, and the Townships of Elizabeth and Forward, in Allegheny County, Pennsylvania; (3) include, in its Order approving the acquisition, the ratemaking rate base of the acquired Assets as determined under Section 1329(c)(2) of the Public Utility Code; and (4) authorize PAWC to recover a distribution system improvement charge, accrue Allowance for Funds Used During Construction and defer depreciation related to/for post acquisition improvements not recovered through the distribution system improvement charge, and include, in its next base rate case, a claim for transaction and closing costs. Application ¶¶ 1-2. PAWC also requests approval of the Asset Purchase Agreement (APA) dated January 24, 2023 as well as other municipal agreements pursuant to Section 507 of the Public Utility Code, and requests that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. *Id.* at ¶¶ 3.

On February 18, 2025, the OCA filed its Protest, Public Statement and Notice of Appearance.

On February 20, 2025, the Office of Small Business Advocate (OSBA) also filed its Protest, Notice of Intervention, Public Statement, and Notice of Appearance.

On February 21, 2025, the Bureau of Investigation and Enforcement (I&E) filed its Notice of Appearance.

On April 28, 2025, the Commission issued a Secretarial Letter that accepted for filing the Company's Application. The Application was published in the May 10, 2025 *Pennsylvania Bulletin* and the Commission set a protest or petition to intervene deadline of May 30, 2025. 55 Pa.B. 3329.

On April 21, 2025, Forward Township filed its Petition to Intervention, and on April 23, 2025, Forward Township filed its Protest in the matter.

On May 5, 2025, EBMA filed its Petition to Intervene.

On May 12, 2025, the ALJs issued their Prehearing Conference Order setting forth a Prehearing Conference to be held on Tuesday, June 3, 2025, at 10 a.m., and requiring that Prehearing Conference Memorandums be filed by noon on Monday, June 2, 2025. The Prehearing Conference Order also set forth shortened discovery modifications that were applicable to discovery issued on or after May 12, 2025.

The Commission has also scheduled a telephonic Public Input Hearing for Thursday, June 5, 2025, at 6 p.m.

II. ISSUES

Based upon a preliminary analysis of PAWC's filing, the OCA has compiled a list of issues that it anticipates will be included in its review of the proposed acquisition. It is anticipated that other issues may arise and may be pursued as discovery proceeds, and the OCA reserves the right to pursue such issues in discovery and testimony.

The OCA has identified the following issues that may require further review as follows:

1. The OCA submits that additional information is required to determine if approval of the Application is in fact necessary for the accommodation or convenience of the public. The law is clear that, for an acquisition to be approved, there must be a showing of substantial affirmative public benefits.

2. The OCA will review the reasonableness and validity of PAWC's and the EBMA's commissioned appraisals.
3. The OCA submits that while rates will not be determined in this case, the rate impact of the proposed acquisition price of \$29,971,178 must be considered in this case when weighing whether this application should be approved.

III. WITNESSES / EVIDENCE

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary. The witnesses will present testimony in written form and will also attach various exhibits, documents, and explanatory information that will assist in the presentation of the OCA's case. The OCA's witnesses are:

Ratemaking Rate Base Value/Fair Market Value:

David J. Garrett
101 Park Avenue
Suite 1125
Oklahoma City, OK 73102
E-Mail: dgarrett@resolveuc.com

Substantial Affirmative Public Benefits:

Nicholas A. DeMarco
Regulatory Analyst
Office of Consumer Advocate
555 Walnut St., 5th Floor
E-Mail: ndemarco@paoca.org

The OCA reserves the right to call additional witnesses and will inform the ALJs and the parties if it determines that an additional witness(es) will be necessary.

IV. PROPOSED SCHEDULE

The OCA, PAWC, EBMA, OSBA, I&E, and Forward Township have agreed to the following procedural schedule. The proposed procedural schedule was also sent to the ALJs:

Direct Testimony of other parties	Tuesday, June 3, 2025
Telephonic Public Input Hearing	Thursday, June 5, 2025 @ 6:00 pm
Rebuttal	Monday, June 9, 2025 ^[1]
Surrebuttal	Thursday, June 12, 2025
Outline of Oral Rejoinder	Friday, June 13, 2025
Hearing	Monday, June 16 and Tuesday, June 17, 2025
Receipt of Transcript	Wednesday, June 18, 2025
Main Brief	Thursday, July 3, 2025
Reply Brief	Wednesday, July 18, 2025

The OCA respectfully requests that given the abbreviated schedule that a one-day turnaround for the transcript also be provided for the telephonic public input hearing in addition to the evidentiary hearing transcript.

The Prehearing Conference Order states that hard copies are not necessary for the Presiding Officers. The OCA respectfully requests that the Presiding Officer permit electronic service to all parties without the requirement of a follow-up hard copy.

^[1] OCA will submit either Supplemental Direct Testimony or Rebuttal Testimony addressing comments made at the Public Input Hearing, depending on when the Transcript of the Public Input Hearing is available. Similarly, PAWC will submit either Rebuttal Testimony or Surrebuttal Testimony addressing comments made at the Public Input Hearing, depending on when the Transcript of the Public Input Hearing is available.

V. SERVICE ON THE OCA

The OCA will be represented in this case by the attorneys listed below:

Christy M. Appleby, Senior Assistant Consumer Advocate
Katie Kennedy, Assistant Consumer Advocate

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The OCA created a group e-mail address, provided above. This is the only e-mail address that is required for service on the OCA. The OCA's group e-mail address will provide the emailed materials to all members of the OCA team including the consultant listed above.

For the purposes of the Prehearing Conference, Ms. Kennedy will be the primary attorney speaking on behalf of the OCA.

VI. SETTLEMENT

The OCA is willing to participate in settlement discussions.

Respectfully Submitted,

/s/ Christy M. Appleby
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Senior Assistant Consumer Advocate
Pa. Attorney I.D. # 85824
E-Mail: CAppleby@paoca.org

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DATED: June 2, 2025

Counsel for:
Darryl A. Lawrence
Acting Consumer Advocate