

July 12, 2017

**VIA E-FILE**

**David P. Zambito**

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

**Re: Application of Pennsylvania-American Water Company-Wastewater under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, for approval of the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of The Municipal Authority of the City of McKeesport's assets related to its wastewater collection and treatment system and other related transactions; Docket No. A-2017-2606103**

**PENNSYLVANIA-AMERICAN WATER COMPANY PREHEARING MEMORANDUM**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find Pennsylvania-American Water Company's Prehearing Memorandum in the above-referenced proceeding. Copies have been served per the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



By: David P. Zambito

Counsel for *Pennsylvania-American Water Company*

DPZ/kmg  
Enclosure

cc: Honorable Mark A. Hoyer  
Honorable Mary D. Long  
Per Certificate of Service

**CERTIFICATE OF SERVICE**

Application of Pennsylvania-American Water Company- :  
Wastewater under Section 1329 of the Pennsylvania :  
Public Utility Code, 66 Pa. C.S. § 1329, for approval of :  
the use for ratemaking purposes of the lesser of the fair : Docket No. A-2017-2606103  
market value or the negotiated purchase price of The :  
Municipal Authority of the City of McKeesport's assets :  
related to its wastewater collection and treatment :  
system and other related transactions :

I hereby certify that I have this day served a true copy of the foregoing Prehearing Memorandum on behalf of Pennsylvania-American Water Company, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA E-MAIL AND FIRST CLASS MAIL:**

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Erika McLain, Esq.  
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Counsel for *Municipal Authority of the City of McKeesport and the City of McKeesport*

DATED: July 12, 2017



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David P. Zambito, Esquire  
Counsel for  
*Pennsylvania-American Water Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Deputy Chief Administrative Law Judge  
Mark A. Hoyer  
and  
Administrative Law Judge Mary D. Long**

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Application of Pennsylvania-American Water Company- :  
Wastewater under Section 1329 of the Pennsylvania Public Utility :  
Code, 66 Pa. C.S. § 1329, for approval of the use for ratemaking :  
purposes of the lesser of the fair market value or the negotiated : Docket No. A-2017-2606103  
purchase price of The Municipal Authority of the City of :  
McKeesport’s assets related to its wastewater collection and :  
treatment system and other related transactions :

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**PREHEARING CONFERENCE MEMORANDUM  
OF PENNSYLVANIA-AMERICAN  
WATER COMPANY**

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Pennsylvania-American Water Company (“PAWC”), by and through its counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.222(d) and in compliance with the Prehearing Conference Order of the Honorable Deputy Chief Administrative Law Judge Mark A. Hoyer, dated June 23, 2017, hereby files this Prehearing Memorandum in the above-captioned matter, and states as follows:

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On May 24, 2017, PAWC filed an application in the above matter under Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) approval from the Commission to issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially

all of The Municipal Authority of the City of McKeesport's ("MACM") assets, properties, and rights related to MACM's wastewater collection and treatment system (the "System") and to set the fair market value of the acquisition for rate-base ratemaking purposes (the "Application").

By Secretarial Letter dated June 14, 2017, the Commission acknowledged receipt of the Application. The Secretarial Letter required PAWC to serve copies of the Application upon proximate municipal entities and water and wastewater providers, which was accomplished on June 16, 2017.

Notice of the filing was published in the *Pennsylvania Bulletin* on June 24, 2017. That Notice established the deadline for filing protests and petitions to intervene as July 10, 2017.

The Commission's Bureau of Investigation and Enforcement ("I&E") entered its appearance on June 21, 2017. The Pennsylvania Office of Consumer Advocate ("OCA") filed a Protest on June 21, 2017. On June 28, 2017, the City of McKeesport ("City") and MACM each filed a Petition to Intervene.

On June 26, 2017, PAWC filed a Petition for Protective Order to protect confidential and proprietary information. In that Petition, PAWC noted that it had contacted counsel for OCA and I&E, and neither objected to the entry of the proposed protective order. PAWC has also confirmed that the City and MACM have no objection to entry of the proposed protective order.

In order to facilitate the timely and open exchange of discovery responses without unnecessary objections and motions to compel, PAWC, OCA, and I&E executed a "Stipulation of the Parties Regarding Objections and Preservation of Issues" and filed it with the Commission on June 27, 2017. As a result, there have been no discovery disputes to date.

By Prehearing Conference Order dated June 23, 2017, Deputy Chief Administrative Law Judge Hoyer advised the parties of a prehearing conference on July 13, 2017. This Prehearing Conference Memorandum is filed in anticipation of that Prehearing Conference.

## **II. COUNSEL**

Counsel for PAWC are:

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## **III. SERVICE OF DOCUMENTS**

PAWC's attorneys are authorized to accept serve on behalf of PAWC in this proceeding. PAWC requests that hard copies of documents be served on Attorney Zambito at the address listed above. PAWC agrees to receive service of documents electronically in this proceeding and requests that all listed counsel for PAWC receive electronic service.

## **IV. ISSUES**

Based on the Commission's recent decisions in *Joint Application of Pennsylvania-American Water Company and The Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209 (Order entered Oct. 19, 2016) ("*PAWC/Scranton*") and *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township*, Docket No. A-2016-2580061 (Order entered Jun. 29, 2017) ("*Aqua/New Garden*"), the legal issues involved in the

instant proceeding should be very limited.<sup>1</sup> I&E, OCA, and PAWC were all involved in those fully-litigated acquisition proceedings. As such, the instant proceeding should not be used to re-litigate legal issues that have already been finally resolved by the Commission. In this regard, the parties should also be cognizant and respectful of the legislative intent of Section 1329. *See Aqua/New Garden* (Motion of Commissioner Powelson, p. 3, Adopted by Vote of 4-1) (“Finally, I believe that we must defer to the General Assembly’s clear support and encouragement of municipal wastewater acquisitions at valuation levels higher than traditional original cost measures.”).

**A. Satisfaction of Section 1102 Standards**

PAWC submits that the proposed transaction is necessary or proper for the service, accommodation, convenience or safety of the public. PAWC submits that the transaction provides substantial affirmative public benefits and that PAWC, as an existing public utility, is presumed to possess the legal, financial, and technical fitness to own and operate the MACM system. Indeed, PAWC is the largest investor-owned water and wastewater service provider in the Commonwealth and has existing operations in the proximity of the System. The transaction will promote the Commission’s goal of regionalization and consolidation, and the purchase price is reasonable in light of the fact that PAWC will be the bulk wastewater service provider for numerous municipalities surrounding the City. Commission approval of the transaction will open the possibility of further consolidation and regionalization of wastewater services in Southwestern Pennsylvania.

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<sup>1</sup> In *PAWC/Scranton*, the Commission concluded, *inter alia*, that it has jurisdiction over a combined (sanitary and stormwater) wastewater service, rate-related issues are properly adjudicated in a future base rate proceeding, and the acquisition produced affirmative public benefits of a substantial nature (which included access to capital, impact on the local community, operational efficiencies, access to capital and consolidation and regionalization of wastewater services). Similarly, in *Aqua/New Garden* (citing extensively to *PAWC/Scranton*), the Commission concluded, *inter alia*, that adjustments could be made to UVE appraisals under Section 1329, net plant-per-customer is but one factor in making a public interest determination, rate-related issues are properly adjudicated in a future base rate proceeding, and the acquisition would produce affirmative public benefits of a substantial nature (which included operational efficiencies and consolidation and regionalization of wastewater services). PAWC also notes that the Pennsylvania Legislature, on November 4, 2016, confirmed Commission jurisdiction over combined (sanitary and stormwater) wastewater systems. *See* 66 Pa. C.S. § 102 (regarding definition of “Wastewater”).

**B. Scope of Section 1329 Proceedings**

The parties have competing views regarding the proper scope of Section 1329 proceedings, including the proper scope of discovery and the Commission’s scope and standard of review. However, in order to streamline the litigation of this matter, PAWC, OCA, and I&E have entered into a “Stipulation Regarding Objections and Preservation of Issues.”

**C. Satisfaction of Section 1329 Standards**

PAWC submits that it has complied with all of the requirements of Section 1329. Accordingly, the fair market value ratemaking rate base of the MACM system is the negotiated purchase price of the MACM system (\$162,000,000), because that figure is lower than the average of the appraisals of the seller and buyer Utility Valuation Experts (“UVEs”) (\$184,176,500).

The Asset Purchase Agreement between PAWC, MACM, and the City (“APA”) does not contain a “rate stabilization plan” as defined by Section 1329. While the APA would require PAWC to maintain MACM’s rates for a one-year period following closing of the transaction, such commitment would not result in rates being controlled beyond the first base rate case in which the assets of the MACM system are incorporated into rate base.<sup>2</sup> Moreover, the APA expressly recognizes the Commission’s ratemaking authority and PAWC’s right to seek rate relief from the Commission.

As permitted by Section 1329, PAWC has petitioned -- as part of the instant filing-- for approval to implement a Distribution System Improvement Charge with respect to customers in the applied-for service territory. PAWC has also, in accordance with Section 1329, petitioned for approval to accrue and defer certain post-acquisition improvement costs associated with the provision of service in the applied-for territory.

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<sup>2</sup> In this regard, PAWC notes that it currently has a base rate proceeding pending before the Commission at Docket No. R-2017-2595853 and the assets associated with this transaction were not included in the rate claim.

**D. Certificates of Filing or Approvals for Section 507 Agreements**

Section 507 of the Code, 66 Pa. C.S. § 507, requires PAWC to file an agreement between itself and a municipal corporation with the Commission. PAWC seeks either Certificates of Filing or approvals of the APA and the agreements with municipal corporations that it will be assuming as a result of the transaction (including agreements for bulk service with surrounding municipalities, as identified in the Application).

**V. WITNESSES AND EVIDENCE**

PAWC expects to call the following witnesses and provide their testimony in written question and answer form:

Mr. Bernard Grundusky

Mr. Grundusky is Director of Business Development for PAWC. Mr. Grundusky's business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Grundusky's business phone number is (717) 533-5000. Mr. Grundusky will provide an overview of the transaction and the public benefits that will result from the transaction. He will also address PAWC's legal, financial, and technical fitness to acquire and operate MACM's system.

Mr. Beatty W. Morgan, Jr.

Mr. Morgan is the Senior Director of Operations, Western Pennsylvania, for PAWC. Mr. Morgan's business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Morgan's business phone number is (717) 533-5000. Mr. Morgan will discuss MACM system's current operations and how PAWC intends to operate the system after closing on the acquisition. Mr. Morgan will also testify regarding certain customer service enhancements that PAWC intends to implement after closing of the transaction.



Mr. David Kaufman

Mr. Kaufman is Vice President – Engineering for PAWC. Mr. Kaufman’s business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Kaufman’s business phone number is (717) 533-5000. Mr. Kaufman will address MACM’s wastewater collection and treatment system to be acquired by PAWC, engineering and environmental issues associated with MACM’s system, PAWC’s proposed Industrial Pretreatment Program, and PAWC’s technical fitness to operate the system.

Mr. Rod P. Nevirauskas

Mr. Nevirauskas is Senior Director of Rates and Regulation for American Water Works Service Company, Mid Atlantic Division, which includes PAWC. Mr. Nevirauskas’ business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Nevirauskas’ business phone number is (717) 533-5000. Mr. Nevirauskas will address rate base and other financial issues relating to the transaction. He will also testify to the initial rates, rules and regulations for former MACM customers, and the impact of the transaction on PAWC’s existing customers.

Hon. Michael Cherepko

Mr. Cherepko is the Mayor of the City. Mr. Cherepko’s business address is 500 Fifth Avenue, Second Floor, McKeesport, Pennsylvania 15132. Mr. Cherepko’s business phone number is (412) 675-5020. Mr. Cherepko will address the financial challenges of the City, as well as the benefits of the transaction to the City and the current customers of MACM.

Mr. Jerome C. Weinert

Mr. Weinert is employed by Associated Utility Services, Inc., the UVE selected by PAWC from the Commission’s pre-approved list of UVEs, as a Principal and Director in its consulting operation (AUS Consultants). Mr. Weinert’s business address is 2405 Park Drive Site 203,

Harrisburg PA. Mr. Weinert's business phone number is (414) 529-5755. Mr. Weinert will testify regarding AUS Consultants' fair market value appraisal of the MACM system.

James S. Merante

Mr. Merante is employed by American Water Works Service Company as the Director of Financial Strategy, Planning and Decision Support for the Mid Atlantic Division, which includes PAWC. Mr. Merante's business address is 800 West Hersheypark Drive, Hershey, PA 17033. Mr. Merante's business phone number is (717) 533-5000. Mr. Merante will address the financing of the transaction and the financial fitness of PAWC.

PAWC reserves its right to call additional witnesses throughout the course of this proceeding as issues develop. PAWC will provide timely notice to the ALJ and the parties of any additional witnesses.

**VI. DISCOVERY**

The Prehearing Conference Order modified the regulations regarding discovery, due to the expedited nature of this proceeding. Nevertheless, the parties, in order to assure timely access to information, have voluntarily agreed to further modifications of the discovery rules, as follows:

- a. Answers to written interrogatories shall be served in-hand within five (5) calendar days of service.
- b. Objections to interrogatories shall be communicated orally within two (2) calendar days and in writing within three (3) calendar days of service of the interrogatories.
- c. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of the written objections.
- d. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within two (2) calendar days of service of such motions.

e. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within five (5) calendar days.

f. Requests for admissions will be deemed admitted unless answered or denied within three (3) calendar days of service.

g. Discovery and all discovery-related pleadings, such as objections, motions, or answers, served after 12:00 noon on a Friday or after 12:00 noon the day before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.

h. The parties are directed to make every reasonable effort to comply with the discovery response times set forth in this agreement. In those instances when compliance is not possible, despite a party's best efforts, the responding party shall so advise and the parties shall work together to address the requests and responses on a timely basis.

i. These discovery rule modifications are for the limited purpose of this proceeding and should not be viewed as binding, or otherwise limiting, upon positions taken by the parties in any other proceeding.

In addition, in order to expedite discovery, on June 27, 2017, PAWC, OCA and I&E filed a Stipulation Regarding Objections and Preservation of Issues, so that the parties will preserve the arguments raised in their respective briefs in *Aqua/New Garden*. The parties have also already engaged in one informal discovery session and are planning future sessions as needed.

## **VII. PROTECTIVE ORDER**

PAWC filed a Petition for Protective Order on June 26, 2017. As noted therein, OCA and I&E have no objection to the Petition. Likewise, PAWC has consulted with MACM and the City and they have no objection. PAWC respectfully requests that the ALJ promptly issue the requested Protective Order.

### **VIII. PROCEDURAL SCHEDULE**

In light of the “non-negotiable” due date for reply briefs of September 1, 2017 mandated by the June 23, 2017 Prehearing Conference Order, the parties have agreed to the procedural schedule that follows.

Non-Company Direct Testimony	July 17, 2017
Rebuttal Testimony	July 26, 2017 (by 2:00PM)
Surrebuttal Testimony	August 2, 2017 (by Noon)
Evidentiary Hearings (Oral Rejoinder)	August 3-4, 2017
Main Briefs	August 22, 2017
Reply Briefs	September 1, 2017

Counsel and witnesses in this case are also involved in several other significant Commission proceedings currently pending that also have statutory deadlines (including PAWC’s base rate case at Docket No. R-2017-2595853 and Aqua’s Section 1329 acquisition of the wastewater assets of Limerick Township at Docket No. A-2017-2605434) -- making scheduling very difficult. Accordingly, the parties respectfully request that, if possible, the ALJ accommodate this schedule.

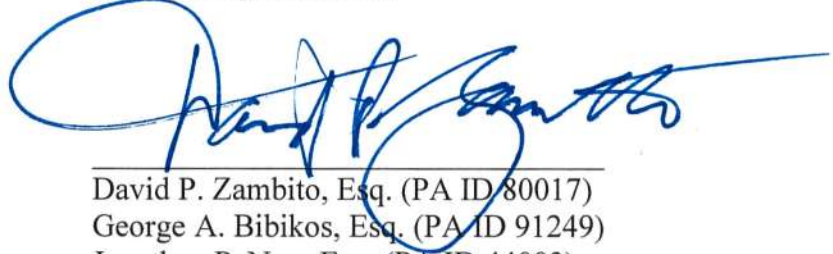
In addition, PAWC requests that evidentiary hearings be held in Harrisburg because counsel and the majority of witnesses are proximate to Harrisburg.

### **IX. SETTLEMENT DISCUSSIONS**

Based on the Commission’s recent decisions in *PAWC/Scranton* and *Aqua/New Garden*, the legal issues raised in this matter are very limited. Accordingly, PAWC believes that there is a reasonable possibility of settlement. PAWC is open to and available for settlement discussions

with the other parties, and will take the initiative to schedule settlement conferences as soon as reasonably possible.

Respectfully submitted,



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*Attorneys for Pennsylvania-American Water  
Company*

Dated: July 12, 2017