

# **Application of Pennsylvania American Water Company to Buy the Butler Area Sewer Authority Wastewater System A-2022-3037047**

## **Why did the OCA agree to settle this case?**

In deciding whether to settle a case or fully litigate a case, the OCA considers whether the outcome of the case, if fully litigated, is likely to be more favorable than agreeing to settle the case. In making this decision, the OCA assesses the strengths and weaknesses of its recommendations and evidence and those of the other parties to the case, its experience in handling similar cases in the past and the Public Utility Commission's (PUC) decisions in those cases.

In consideration of those factors, the OCA determined that a settlement in this case was the better option. Based on prior municipal acquisition cases, it seemed likely that the PUC would approve the sale of the Butler Area Sewer Authority (BASA) system to Pennsylvania-American Water Company (PAWC), without also putting in place measures to protect low-income customers and PAWC's existing customers from the cost to buy and operate the BASA system. Under the Settlement, the total costs of the transaction are reduced by \$3.5 million from what PAWC requested, to the benefit of acquired and existing customers. We outline additional consumer protections below. The OCA believes that if this case had been litigated, the result likely would have been worse for consumers than what was negotiated in the Settlement. By settling the case, we have reduced the overall cost of the sale for customers, while putting some protections in place to mitigate future rate increases for PAWC's customers.

## **What impact did the recent Commonwealth Court decision have on the OCA's decision to settle?**

While the settlement agreement is being filed with the PUC for approval after the recent court decision in *Cicero v. Pa. Pub. Util. Comm'n*, 910 C.D. 2022 (Pa. Cmwlth. 2023), in which the Court reversed a recent decision by the PUC to approve an acquisition of a municipal wastewater system, the OCA's decision to settle this case occurred prior to that decision being released by the Commonwealth Court. The OCA chooses not to speculate about whether its decision would have been different if that case had been decided before it reached the decision to settle the BASA case.

## **What would have happened procedurally if the OCA had not settled the case?**

The Administrative Law Judge (ALJ) assigned to this case would hear the OCA and other parties' arguments and issue a Recommended Decision detailing her findings and recommendations to the PUC. The parties would have a chance to respond by filing "exceptions" that argue for or against the Recommended Decision. Next, the PUC would evaluate the parties' arguments and the ALJ's recommendations, and issue an Order approving, denying, or modifying the Recommended Decision. That final Order is what determines whether the acquisition is approved and whether any conditions will be imposed by the PUC.

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Since Section 1329 took effect in 2016, the OCA has asked the PUC to reject five Section 1329 acquisitions because we did not think the acquisition would, all harms and benefits considered, provide a benefit to the public. The PUC rejected the OCA's arguments and approved the sales. When a case is fully litigated, there is no guarantee that the PUC will adopt the OCA's positions particularly where the utility and other parties disagree. The OCA would make its best arguments, but ultimately have no control over what the PUC would decide to approve. While the OCA acknowledges that the recent Commonwealth Court decision would have provided more clarity for the PUC in reaching its decision, the OCA is uncertain how significantly the Commonwealth Court decision would have improved the OCA's litigation position if the case were fully litigated before the PUC. On the other hand, when the OCA settles a case, we have greater control over the outcome of the proceeding (although even with a settlement, the PUC could decide to reject or modify the settlement) because we are offering the PUC one position agreed to by all the parties.

## **What consumer protections are contained in the settlement?**

If fully accepted by the PUC, the Settlement provides that:

- PAWC will be permitted to add \$228 million to the rate base that it recovers, and earns a profit on, in the rates charged to its wastewater and water customers. This is \$3.5 million *less* than what PAWC originally asked the PUC to approve. This reduces the overall cost of the acquisition and slightly reduces the future rate impact for BASA and PAWC customers.
- PAWC will increase eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines (FPIG) for all PAWC customers. Also, PAWC will contribute an additional \$700,000 annually to the Company's hardship grant program for the five years following closing (\$3,500,000 total). PAWC will make this contribution from its own funds and not collect it from ratepayers. Making hardship grants available to more PAWC customers, and increasing funding for the grants, will provide a concrete and actual benefit to PAWC's existing and acquired customers that will provide a small offset to the rate increases that will result from this acquisition.
- When rates are set in PAWC's next base rate case, the PUC will have the information necessary to set cost-based rates for service because the Settlement requires PAWC to provide a separate cost of service study for the BASA system. Customers in the BASA system will receive notice about potential rate increases that will move them toward the level of rates paid by most of PAWC's existing wastewater customers. This helps to limit the risk to other PAWC ratepayers for how long and how much they will subsidize the cost for serving customers in the BASA system, but also recognizes that the rate

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impact on customers in the BASA system would be too drastic if their rates were equalized in the first rate case.<sup>1</sup>

- The one-year rate freeze agreed to by PAWC and BASA as part of the sale will not harm PAWC's other customers. If there is a delay in increasing rates for BASA customers compared to other customers, due to the rate freeze, then PAWC will forego any lost revenue – it will not be recovered through rates charged to other customers.
- As a general matter, utilities regulated by the Public Utility Commission cannot provide free service. As part of making rates more fair and cost-based, entities that currently receive free service from BASA will begin to pay rates and contribute to PAWC's cost to serve them as soon as PAWC's next rate case is finished.
- BASA customers are protected from paying a surcharge to help with system improvements known as a Distribution System Improvement Charge (DSIC) until projects in their system are eligible for recovery through that charge. For the benefit of existing customers, there is a deadline for PAWC to apply the DSIC to the BASA system. Having the acquired customers pay a DSIC is one way in which PAWC's existing customers can benefit in the short-term from the acquisition – by spreading the costs recovered through the DSIC over a larger customer base. Also, system improvement projects already planned for existing PAWC wastewater customers will not be given less priority because of the BASA acquisition.
- As PAWC already provides water service in the Butler area, PAWC will automatically enroll any customers enrolled in the low-income discount for their water service in the discount for wastewater service at the time of closing. PAWC will send a welcome letter to BASA customers that will include information about its low-income and other customer assistance programs along with eligibility requirements for these programs. PAWC will also work with community-based organizations with offices local to the areas served by the BASA system for purposes of providing information and enrolling customers in its customer assistance programs. Automatic enrollment, local outreach, and timely information about the availability of PAWC's low-income programs will benefit some customers in the BASA system. Increased enrollment in PAWC's low-income assistance programs and improved payment patterns will reduce costs to all customers.

Because the above measures to reduce risks regarding the rate impact that will result from this acquisition would likely not have been required by the PUC after litigation, the OCA agreed to the Settlement.

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<sup>1</sup> A residential wastewater customer in the BASA system using 3,212 gallons currently pays \$45.50 per month. Most of PAWC's residential wastewater customers with the same usage currently pay \$106.15 per month, or 2.3 times more.

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## **What happens now with the Settlement?**

At this time, a Joint Petition for Settlement has been submitted to the ALJ who has been overseeing this proceeding from its beginning. The Joint Petition for Settlement contains the Settlement itself and Statements in Support of the Settlement from each of the active parties in this proceeding. The ALJ will review the Settlement and the Statements in Support from each party and release a Recommended Decision (RD) that either 1) approves the Settlement in full, 2) modifies the Settlement, or 3) rejects the Settlement. Once the RD is released, all active parties to this proceeding will have a chance to comment on the RD by filing exceptions. Parties will typically only do this if they disagree with something in the RD. Finally, the PUC will review the RD and any exceptions and publish an Opinion and final Order in this proceeding.

The PUC encourages settlements. The OCA is aware of this and knows that if we are a party to a Settlement that includes all the other parties in a case, the Settlement is likely to be approved. We take this into consideration when settling cases such as this. While we stand by the litigation positions outlined in our testimony, settling this case allowed us to ensure that some protections are put in place for customers and the value of the system assets that PAWC is allowed to use to set future rates is within the range of what we expect the PUC would have allowed if the case had not been settled.

## **I filed a Protest and want to Object to or Support the Settlement. How do I do that?**

Customers who filed Protests have until August 23, 2023 to file a letter objecting to or supporting the proposed Settlement. Those letters will be considered by the ALJ and PUC. If customers have questions about how to do this, they can contact the OCA at [consumer@paoca.org](mailto:consumer@paoca.org) or 1-800-684-6560.

Whether or not a customer files a letter, they will have an additional opportunity to provide input. When the RD is released, it will be emailed or mailed to customers who filed a Protest and they can file Exceptions to all or part of the ALJ's recommendations. Customers can contact the OCA with questions about the RD or how to file Exceptions.

## **When will we know if the PUC accepts, modifies, or rejects the Settlement?**

The PUC will likely rule on the settlement at its Public Meeting on November 9, 2023.

## **When will rate increases from the BASA acquisition go into effect?**

Increases related to PAWC's acquisition of BASA and the other systems PAWC has acquired since its last base rate case, will not take effect until PAWC files its next base rate case. The OCA does not know when PAWC will file a rate case, but based on how often PAWC has filed rate cases in the past, it could be sometime in 2024. All PAWC's wastewater and water customers, including

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customers in systems recently sold to PAWC, will receive notice when that rate case is filed and will have the opportunity to participate in that case.

## **What can I do now to control my PAWC bill and begin preparing for future rate increases?**

You can act now to monitor and conserve water usage in and around your home. For example, take shorter showers – a few minutes makes a big difference. Installing a low-flow shower head can reduce the amount of water you use while showering by as much as 50 percent. Turn off the tap while brushing your teeth, shaving, or washing dishes. Run dishwashers and washing machines only when full, using water-saving cycles and appropriate load sizes. Consider water and energy-efficient appliances, water-saving showerheads, toilets, and faucet aerators. These changes may also help you save money on other utility bills, such as gas and electricity.

Check your home for leaks periodically. Even the smallest leak can cause the loss of thousands of gallons of water each month, resulting in waste and an unnecessarily high bill. Indoors, look for dripping faucets, toilets that keep draining and refilling, and puddles or water marks on the floor around a refrigerator, dishwasher, washing machine, hot water tank. Outdoors, look for soft spots on your lawn which can indicate leaks in the service line or sprinkler system. The faster you notice a problem and address it, the faster it can be fixed.

Additionally, you can sign up for budget billing with PAWC. Budget billing is a free service that is available to eligible residential customers that provides predictable monthly payments and avoids higher bills caused by seasonal spikes in water use. To check eligibility and to sign up, call PAWC at 1-800-565-7292.

## **What can I do if I cannot afford my PAWC bill?**

PAWC has an H2O (Help to Others) Program that provides financial assistance for water and wastewater customers who qualify. The program provides hardship grants as well as discounts on your bills. Currently, the hardship fund program is limited to households at or below 200% of the poverty guidelines, if the settlement is approved that will increase to 250%. The discount program remains limited to households at 150% of the poverty guidelines. You can contact PAWC at 1-800-565-7292 or online at <https://www.amwater.com/paaw/customer-service-billing/Customer-Assistance-Programs/> to get information about the H2O program and other state and federal assistance programs:

- Emergency Rental Assistance Program -- Rental and utility bill assistance for renters and landlords
- Pennsylvania Homeowner Assistance Fund -- Assistance for homeowners to prevent mortgage delinquencies, default, foreclosure, displacement, and utility disconnection

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You may also enter into a payment arrangement with PAWC. The Company advises as follows:

“If you cannot pay your bill by the due date, please contact our customer **service** center immediately, BEFORE the due date, at 1-800-565-7292. We will work with you to determine payment plan options that may be available.”

If you are facing termination of service and someone in your household has a medical condition that would be made worse without water or wastewater service, you may provide the Company with a Medical Certification. PAWC states as follows:

“The medical certification will postpone the termination of water service for 30 days. The certification is designed to provide the customer with additional time to pay their past-due balance. The current bill must be paid while the medical certificate is in effect. The customer is still responsible for the past-due amount and will be given the opportunity to pay the balance in monthly installments. For more information, review the [Medical Certificate Guidance](#), download the [Standard Medical Certificate Form](#) (may be used but is not required), or contact Customer Service at 1-800-565-7292.”

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