

COMMONWEALTH OF PENNSYLVANIA



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March 29, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17101

Re: Petition of Delaware Sewer Company
an Investigation into Whether the Public
Utility Commission Should Order a
Capable Public Utility to Acquire
Delaware Sewer Company
Docket No. I-2016-2526085

Dear Secretary Chiavetta:

Attached for electronic filing is the Motion of The Office of Consumer Advocate to Join Pennsylvania American Water Company in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Lauren Burge

Lauren Burge
Assistant Consumer Advocate
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Attachment

cc: Office of Administrative Law Judge
Certificate of Service

218895

CERTIFICATE OF SERVICE

Re: Petition of Delaware Sewer Company an Investigation
Into Whether the Public Utility Commission Should Order
a Capable Public Utility to Acquire Delaware Sewer Company
Docket No. I-2016-2526085

I hereby certify that I have this day served a true copy of the following document, the Motion of The Office of Consumer Advocate to Join Pennsylvania American Water Company, 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 29th day of March, 2016.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Delaware Sewer Company for an :
Investigation Into Whether the Public Utility : Docket No. I-2016-2526085
Commission Should Order a Capable Public :
Utility To Acquire Delaware Sewer Company :

MOTION OF THE OFFICE OF CONSUMER ADVOCATE
TO JOIN PENNSYLVANIA AMERICAN WATER COMPANY

Pursuant to Section 5.103 of the Public Utility Commission’s Rules of Practice and Procedure, 52 Pa. Code § 5.103, the Office of Consumer Advocate (OCA) moves to join Pennsylvania American Water Company as an indispensable party to the above-captioned proceeding. In support thereof, the OCA submits the following:

1. Delaware Sewer Company (DSC) provides wastewater service to thirty-nine residential customers in Sections 19, 21, and 22 of the Wild Acres development in Pike County, Pennsylvania. On February 6, 2014, DSC filed a Petition asking the Commission to initiate a Section 529 investigation. The OCA participated in the Petition proceeding at Docket No. P-2014-2404341, and supported the request for a Section 529 investigation because DSC is not currently providing safe and adequate wastewater service under Section 1501 of the Public Utility Code. DSC does not have the financial capability to make necessary repairs to provide adequate service, and as such it is not a viable system. As a result of that proceeding, the Commission issued an Opinion and Order on January 28, 2016 instituting an investigation into whether the Commission should order a capable public utility to acquire the Company.
2. In its Petition, DSC named Pennsylvania American Water Company (PAWC) as a capable public utility that would be a likely candidate to acquire DSC’s wastewater system.

PAWC currently provides water service to DSC's customers in Wild Acres. Thus, it has an existing relationship as a water utility for the DSC customers. Additionally, PAWC previously acquired the Clean Treatment Sewage Company's wastewater system;¹ Clean Treatment and DSC were both wholly owned subsidiaries of Consolidated Pocono Utilities, Inc. Because PAWC already has operations in the area, it is the most likely capable public utility to acquire DSC's wastewater system. PAWC was a party to the Petition proceeding,² but has not yet been joined as a party to this Investigation.

3. Any party to a proceeding can move for the joinder of an indispensable party. Minick v. General Telephone Co. of Pa., 51 Pa. P.U.C. 526, 529 (1978). The OCA is a party in this proceeding since its Notice of Intervention and Public Statement were filed on March 3, 2016.

4. "In Pennsylvania, an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction." Scherbick v. Community College of Allegheny County, 479 Pa. 216, 220 (1978).

5. The OCA submits that PAWC is an indispensable party to this proceeding because it is the most likely capable public utility to acquire DSC's wastewater system. PAWC already provides water service in the Wild Acres Development, and has other operations within Pike County. Additionally, Section 529(a) provides six requirements that must be met in order for the Commission to order a capable public utility to acquire a small water or wastewater system. Section 529(a)(5) and (6) require the following:

¹ PAWC acquired Clean Treatment as a result of a Section 529 investigation at Docket No. I-2009-2109324. PAWC participated in that proceeding without having to be joined as an indispensable party.

² DSC named PAWC as a potential acquiring capable public utility in its Petition asking the Commission to initiate this proceeding. PAWC filed an Answer to DSC's Petition.

(5) that the **acquiring capable public utility** is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the **acquiring capable public utility** to its preacquisition customers will not increase unreasonably because of the acquisition.

66 Pa. C.S. § 529(a)(5) and (6) (emphasis added). These provisions require the participation of the potential acquiring capable public utility. Without the capable public utility's participation, it is impossible to determine whether that utility has the financial, managerial, and technical ability to acquire the small sewer system, and how the rates of the capable public utility's existing customers will be affected due to the acquisition. Thus, two of the six factors in Section 529(a) cannot be evaluated if PAWC is not a party to this proceeding. Finally, because PAWC may be ordered to acquire DSC's wastewater system as a result of this investigation, PAWC's interests are also at stake in this proceeding and thus PAWC should participate in the investigation, as it participated in the preceding Petition case.

6. Moreover, courts have ruled that for a party to be indispensable, at least the following must be true: (1) there is jurisdiction over the party; (2) absent parties have a right or interest related to the claim; and (3) the right or interest is essential to the merits of the issue and justice cannot be afforded without violating the due process rights of absent parties. See Trucco v. PPL Electric Utilities Corporation, 2002 Pa. P.U.C. LEXIS 21; Mechanicsburg Area School District v. Kline, 494 Pa. 476 (1981). The OCA submits that each of the elements necessary to establish PAWC as an indispensable party has been satisfied.

First, the Commission has jurisdiction to institute this investigation pursuant to Section 529 and to order a capable public utility, such as PAWC, to acquire a small water or wastewater system. 66 Pa. C.S. §§ 102 ("public utility")(1)(vii), 529(a), (d), (e).

Second, PAWC has an interest in this proceeding and a right to be a party to this proceeding because as a result of this investigation, PAWC may be ordered to acquire DSC's wastewater system and to provide wastewater service to its customers going forward. If the outcome sought by DSC and the OCA in this case is granted, it would have an impact upon PAWC's rights or interests.

Additionally, Section 529(h) requires that the Commission provide notice to certain parties upon opening a Section 529 investigation. 66 Pa. C.S. § 529(h). This includes providing notice to "all proximate public utilities providing the same type of service as the small water or sewer utility." Id. In the past, the Commission has named the proximate capable public utilities in its Order initiating the investigation. See In re: Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. pursuant to Section 529 of the Pennsylvania Public Utility Code, Investigation Order, Docket Nos. I-00070114, P-00072313, A-230550F2000 (July 11, 2007). The Commission did not name any proximate public utilities in its Order initiating this investigation, but the fact that the Public Utility Code requires that the proximate public utilities receive notice of the investigation indicates that their rights and interests may be affected by the outcome of the investigation and that those utilities may be indispensable parties.

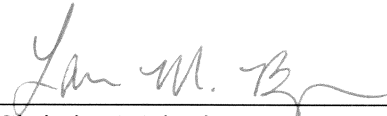
Finally, PAWC's right or interest is essential to the merits of this case, and justice cannot be afforded without violating the due process rights of the absent party. Again, the possibility that PAWC may be ordered to acquire and operate DSC's system means that PAWC has a significant interest in this case, and that due process requires its involvement as a party. In Nelson v. Duquesne, the Commission stated that "[u]nder any pertinent standard, someone who is to be assigned an obligation to pay money should be viewed as an indispensable party to the proceeding in question." 1990 Pa. P.U.C. LEXIS 24. The outcome of this case may require

PAWC to pay money to acquire and operate DSC's wastewater system, and thus PAWC is an indispensable party in this investigation.

For the foregoing reasons, a full Section 529 investigation cannot be completed without PAWC's involvement, and as such the OCA submits that PAWC should be joined as an indispensable party to this proceeding.

WHEREFORE, the OCA respectfully requests that Pennsylvania American Water Company be joined as an indispensable party to this proceeding.

Respectfully submitted,



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Dated: March 29, 2016

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