

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 5, 2016

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

Re: Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton for Approval of (1) the transfer, by sale, of substantially all of the Sewer Authority of the City of Scranton's Sewer System and Sewage Treatment Works assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Scranton and the Borough of Dunmore, Lackawanna County, Pennsylvania.  
Docket No. A-2016-2537209

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon

Erin L. Gannon

Senior Assistant Consumer Advocate

PA Attorney I.D. # 83487

E-Mail: EGannon@paoca.org

Attachment

cc: Office of Administrative Law Judge  
Office of Special Assistants  
Bureau of Technical Utility Services (email only)  
Certificate of Service

219119

CERTIFICATE OF SERVICE

Joint Application of Pennsylvania-American :  
Water Company and the Sewer Authority :  
of the City of Scranton for Approval of :  
(1) the transfer, by sale, of substantially all :  
of the Sewer Authority of the City of Scranton's :  
Sewer System and Sewage Treatment Works : Docket No. A-2016-2537209  
assets, properties and rights related to its :  
wastewater collection and treatment system to :  
Pennsylvania-American Water Company, and :  
(2) the rights of Pennsylvania-American Water :  
Company to begin to offer or furnish wastewater :  
service to the public in the City of Scranton and :  
the Borough of Dunmore, Lackawanna County, :  
Pennsylvania.

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, 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 5<sup>th</sup> day of April 2016.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Johnnie E. Simms, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

John Evans  
Office of Small Business Advocate  
Suite 202, Commerce Building  
300 N. Second Street  
Harrisburg, PA 17101

Alan Michael Seltzer, Esq.  
John F. Povilaitis  
Buchanan Ingersoll & Rooney PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101

David P. Zambito, Esq.  
D. Troy Sellars  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Jeffrey J. Belardi, Esquire  
The Sewer Authority of the  
City of Scranton  
410 Spruce Street, 4<sup>th</sup> Floor  
Scranton, PA 18503

Paul J. Walker, Esquire  
The Sewer Authority of the  
City of Scranton  
205 North Washington Ave. #1  
Scranton, PA 18503

/s/ Erin L. Gannon

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Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
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219120

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Joint Application of Pennsylvania- :  
American Water Company and the Sewer :  
Authority of the City of Scranton for Approval :  
of (1) the transfer, by sale, of substantially all :  
of the Sewer Authority of the City of :       Docket No. A-2016-2537209  
Scranton's Sewer System and Sewage :  
Treatment Works assets, properties and rights :  
related to its wastewater collection and :  
treatment system to Pennsylvania-American :  
Water Company, and (2) the rights of :  
Pennsylvania-American Water Company to :  
begin to offer or furnish wastewater service to :  
the public in the City of Scranton and the :  
Borough of Dunmore, Lackawanna County, :  
Pennsylvania.

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PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE

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The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§5.51-5.53, and Chapter 11 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq.* Through this Application, Pennsylvania-American Water Company, Inc. (PAWC) seeks Commission approval for the acquisition of the sewage system and sewage treatment works assets of the Sewer Authority of the City of Scranton (Authority). PAWC also seeks approval to provide wastewater service in the areas served by the Authority and approval of its proposed tariff for service of the transferred customers.

The OCA files this Protest in order to ensure that the application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and regulations.

Specifically, the OCA avers as follows:

1. The Protestant is Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5<sup>th</sup> Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are Christine Maloni Hoover and Erin L. Gannon, Senior Assistant Consumer Advocates.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of PAWC's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3).

4. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a). See City of York v. Pa. P.U.C., 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); see also Popowsky v. Pa. P.U.C., 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the

Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. Preliminarily, the OCA has identified the following areas that requires further consideration by the Commission and must be resolved prior to Commission approval of this Application.

Provision of Safe, Adequate and Reasonable Service:

7. If the Application is approved, PAWC’s will more than double its wastewater customer base. The OCA submits that additional information is necessary to show that PAWC is financially, managerially and technically capable of providing safe, adequate and reasonable service to more than 52,000 customers. Further, the Authority is under an Environmental Protection Agency consent decree that requires significant upgrades to the wastewater system, which are projected to cost approximately \$140 million. The Asset Purchase Agreement also provides that PAWC will pay up to \$195 million for the Authority’s assets.<sup>1</sup> More information is needed to show that PAWC can financially and technically comply with the consent decree while maintaining safe and adequate service to all of its customers, at just and reasonable rates.

Proposed Rates:

8. PAWC has requested, as part of the application for a certificate of public convenience, approval to charge customers the base rates charged by the Authority at the time of closing, except that the bi-monthly customer charge for residential customers will be converted to a monthly charge. Based on the Authority’s current rates, PAWC would charge \$19.50 plus \$0.50 per 100 gallons per month for metered residential customers and a \$21.53 per month flat

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<sup>1</sup> The transferred assets exclude *inter alia* all storm water system assets. Exh. J, ¶¶5-6.

rate for non-metered residential customers. Exh. K. PAWC's current residential wastewater Zone 1 rates are a \$7.50 per month customer charge and \$1.2880 per 100 gallon volumetric charge. An acquired Authority residential customer using 3,000 gallons per month would continue to pay \$34.50 per month once they become PAWC customers rather than \$46.14 that PAWC's Zone 1 customers would pay for the same usage. Further the Joint Applicants propose that the acquired customer rates would not increase before January 1, 2018 and, for ten years thereafter, would not increase by more than an average of 1.9% compound annual growth rate per year. The OCA submits that additional information is necessary to determine if the proposed rates and rate increase limitations are reasonable in light of the anticipated investment required to comply with the consent decree.

10. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including public input hearings in the Authority's service territory, regarding the Application.

Respectfully submitted,



Erin L. Gannon  
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Christine Maloni Hoover  
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Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: April 5, 2016

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PUBLIC STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Pennsylvania American Water Company (PAWC) of the Sewer Authority of the City of Scranton (Authority).

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC's current customers and Authority customers. The Acting Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Acting Consumer Advocate will investigate the proposed acquisition and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

PAWC serves approximately 21,229 wastewater customer accounts in Pennsylvania. The Authority serves approximately 31,000 customers in the City of Scranton and the Borough of Dunmore, Lackawanna County, Pennsylvania.