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eFiling Confirmation	
Docket Number:	A-2016-2537209
Description:	Joint Application of Pennsylvania-American Water Company and Sewer Authority of City of Scranton for Approval of the Transfer, by Sale, of Substantially all of the Sewer Authority of the City of Scranton's Sewer System and Sewage Treatment Works Assets
Transmission Date:	7/19/2016 4:26:43 PM
Filed On:	7/19/2016 4:26:43 PM
eFiling Confirmation Number:	1642979

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	Communication	Briefs

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COMMONWEALTH OF PENNSYLVANIA

July 19, 2016

E-FILED

The Honorable David A. Salapa
The Honorable Steven Haas
Administrative Law Judges
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor West
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 Judge Salapa and Judge Haas:

Enclosed please find the Main Brief, filed electronically today with the Pennsylvania PUC, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the enclosed Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon E. Webb".

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Parties of Record
Mr. Brian Kalcic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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-America 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

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb
Assistant Small Business Advocate
Attorney ID # 73995**

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101**

Dated: July 19, 2016

I. INTRODUCTION

On March 30, 2016 the Pennsylvania-American Water Company. (“PAWC” or “Company”) and The Sewer Authority of the City of Scranton’s Sewer System and Sewage Treatment Works (“City” or “Sewer Authority”) (collectively, “Joint Applicants”), with respect to the proposed (1) transfer by sale of substantially all of the Sewer Authority’s assets, properties and rights related to its wastewater collection and treatment systems to PAWC; and, (2) PAWC’s right to offer, render, furnish and supply wastewater service in the areas served by the Authority (including approval to make effective upon closing the *pro forma* tariff supplement attached to the filing as **Exhibit L**).

The Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Protest on April 25, 2016. The Office of Consumer Advocate (“OCA”) also filed a Protest on April 5, 2016. The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance on April 8, 2016. The parties have filed testimony, engaged in discovery, and participated in hearings, which were held on July 6-8, 2016. The OSBA’s witness in this proceeding was Brian Kalcic.

This OSBA files this brief in accordance with the procedural schedule set in this proceeding.

II. STATEMENT OF THE CASE – SUMMARY OF ARGUMENT

The OSBA's primary issue in this case the Variance Adjustment set forth in Section 7.07 of the proposed Asset Purchase Agreement ("APA") by and between the City and PAWC. The key provisions of Section 7.07 of the APA limit the rates that would be paid by Scranton area customers following the closed of the transaction, prevent PAWC from imposing a rate increase for Scranton customers prior to January 1, 2018, and after the end of year 10 following the close of the proposed acquisition, require PAWC to calculate a "Variance Adjustment" defined as the cumulative positive difference, if any, between actual revenues provided by Scranton area wastewater customers to PAWC for wastewater service over the ten-year period and the initial annual revenues contributed by Scranton area customers inflated at a compound annual growth rate ("CAGR") of 1.9% per year.

The Variance Adjustment is essentially a penalty for moving Scranton are customers towards PAWC's statewide average rate for wastewater and should be rejected. In the event the Commission accepts the Variance Adjustment provisions of Section 7.07 of the APA, the Commission should prohibit the recovery of any Variance Adjustment payment from ratepayers.

III. ARGUMENT

A. The Variance Adjustment is contrary to provisions of the Public Utility Code

The Public Utility Code requires that each certificated utility in the Commonwealth adhere to its tariff. Specifically, Section 1303 provides that "[n]o public

utility shall, directly or indirectly...demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered...by such public utility that that specified in the tariffs of such public utility and applicable thereto."¹

As set forth in Mr. Kalcic's testimony, the key provisions of Section 7.07 of the APA are as follows:

- 1) there would be no change in the current effective rates paid by Scranton area customers upon the close of the proposed transaction;
- 2) PAWC shall not implement a rate increase for Scranton area customers that would be effective prior to January 1, 2018;
- 3) PAWC shall not propose or implement a distribution service improvement charge ("DSIC") for Scranton area customers prior to January 1, 2019;
- 4) in the first base rate case filed by PAWC after the effective date of the agreement, PAWC shall not propose or request any base rate increase for Scranton area customers;
- 5) after the end of Year 10 following the close of the proposed transaction, PAWC shall calculate a "Variance Adjustment," defined as the cumulative positive difference, if any, between (i) the actual annual revenues provided by Scranton area wastewater customers to PAWC for wastewater service over the ten-year period (footnote omitted) and (ii) the initial (starting) annual revenues contributed by Scranton area customers inflated at a compound annual growth rate ("CAGR") of 1.9% per year;
- 6) if the Variance Adjustment is determined to be positive, PAWC will pay to Scranton, or to then current Scranton area customers (in the form of a one-time flat-rate bill credit), an amount equal to the Variance Adjustment, as compensation for Scranton area customers' annual revenues (i.e., average rate increases) exceeding the CAGR of 1.9% per year; and
- 7) at the end of Year 10, if the rates paid by Scranton customers (by rate class) are lower than PAWC's then applicable Main Division (or statewide) rates for wastewater service, PAWC will endeavor to equalize Scranton area and Main Division rates over a three year period (Years 11 to 13).²

¹ 66 Pa. C.S. §1303.

² OSBA Statement No. 1 at 2

In the event that a Variance Adjustment is paid, either by PAWC to Scranton, or refunded to Scranton area customers, PAWC has not determined how to treat the Variance Adjustment for ratemaking purposes.³ In the event that PAWC is required to pay the Variance Adjustment to Scranton customers any payment would technically be a refund to the former Scranton Sewer Authority (“SSA”) customers. As such, those former SSA customers, now also PAWC customers, would pay less for wastewater services (utility services) than PAWC’s tariffed rates for wastewater service.

B. The Rates Resulting from the APA and Variance Adjustment May Violate the Concepts of Gradualism and Rate Shock

The Joint Applicants were not able to provide the average monthly usage levels of Scranton ratepayers by customer class.⁴ However, based on the information provided by the Joint Applicants in discovery, Mr. Kalcic was able to create a comparison of “typical” monthly bills of residential and non-residential customer in Scranton and Rate Zone 1 which shows that Scranton customers typically pay 35% to 40% less than similarly sized customers residing in PAWC’s Rate Zone 1, depending on rate class.

³ OSBA Statement No. 1 at 3, *citing* PAWC, response to OSBA-I-1.

⁴ OSBA Statement No. 1 at 4.

Table 2

<i>Calculated Monthly Bill, By Usage Level</i>	<i>Scranton Area</i>	<i>Rate Zone 1 /1</i>	<i>% of Zone 1</i>
	(1)	(2)	(3)=(1)/(2)
<u>Residential</u>			
4,000 gallons	\$39.50	\$61.98	64%
5,000 gallons	\$44.50	\$75.50	59%
<u>Non-Residential</u>			
8,000 gallons	\$67.75	\$115.03	59%
10,000 gallons	\$83.25	\$138.54	60%

Note 1: Includes current DSIC rate of 5.00%.

Source: Applicable rates times assumed monthly billing determinants.⁵

PAWC established a statewide rate for wastewater service in its last base rate proceeding with the goal of implementing single tariff pricing over time.⁶ However, PAWC is projecting an average annual increase of in overall wastewater rates of 2.70% during the first ten years following the close of the proposed transaction.⁷ Holding the average annual increase for Scranton customers to no more than 1.9% in years 1-10 is contrary to PAWC's goal of single tariff pricing.

Further, as Mr. Kalcic testified, if the Commission were to adopt the Company's rate commitments to Scranton, such that the CAGR in Scranton revenues averaged no more than 1.9% for Years 1-10 following the close of the proposed transaction, the rates of Scranton customers would move away from the Company's statewide wastewater rate in that same ten year period thereby widening the gap that already exists. As such, the Variance Adjustment is contrary to PAWC's stated goal of single tariff pricing for

⁵ OSBA Statement No. 1 at 4.

⁶ OSBA Statement No. 1 at 4, *citing* Docket No. R-2013-2355276.

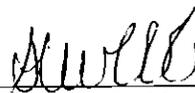
⁷ OSBA Statement No. 1 at 5 *citing* PAWC's response to I&E-12c.

wastewater and *may* result in rates that violate the principles of gradualism in years 11-13 following the close of the proposed transaction.⁸

IV. CONCLUSION

For the reasons listed above, the Commission should reject the Variance Adjustment provisions of Section 7.07 of the APA. In the alternative, should the Commission approve the variance adjustment, the OSBA respectfully requests that the Commission prohibit PAWC from requesting permission to recover the costs of the Variance Adjustment from ratepayers.

Respectfully submitted,



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Dated: July 19, 2016

⁸ OSBA Statement No. 2 at 2.