



COMMONWEALTH OF PENNSYLVANIA

September 8, 2016

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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**

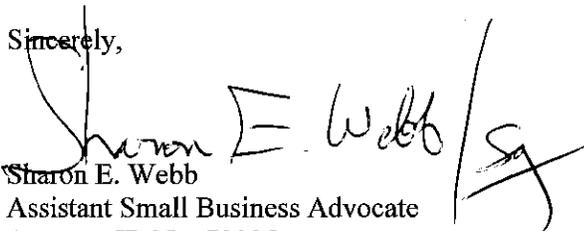
Dear Secretary Chiavetta:

I am delivering for filing today the Reply Exceptions relative to the Recommended Decision of Administrative Law Judges Salapa and Haas, 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 attached Certificate of Service.

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

Sincerely,


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

Enclosures

cc: The Honorable David A. Salapa
The Honorable Steven Haas
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-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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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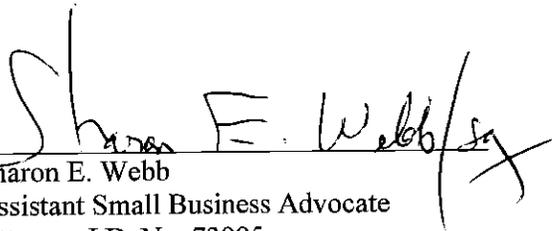
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DATE: September 8, 2016


Sharon E. Webb
Assistant Small Business Advocate
Attorney I.D. No. 73995

**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	:	Docket No. A-2016-22537209
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	:	

**REPLY EXCEPTIONS
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
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Dated: September 8, 2016

I. INTRODUCTION AND PROCEDURAL HISTORY

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 filing was assigned to Administrative Law Judge David A. Salapa, and Administrative Law Judge Steven K. Haas for hearings and a recommended decision. In accordance with the litigation schedule established in the case, 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 and other parties filed main and reply briefs in accordance with the procedural schedule set in this proceeding.

On August 24, 2016, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judges (“ALJs) Salapa and Haas. In the

Recommended Decision (“RD”) the ALJs recommended denial of the joint application because the variance adjustment set forth in the Asset Purchase Agreement (“APA”) is neither reasonable, nor in the public interest and is contrary to the provisions of The Public Utility Code.¹ The Joint Applicants and the Office of Consumer Advocate filed exceptions to the RD. The OSBA submits these Reply Exceptions in accordance with the litigation schedule and in response to the Exceptions submitted by the Joint Applicants.

¹ R.D. at 42.

II. REPLY EXCEPTIONS

A. **REPLY TO JOINT APPLICANTS' EXCEPTION NO. 1 and 2: The ALJs were correct in ruling that the Variance Adjustment of the APA was both unreasonable and contrary to the Public Utility Code. R.D. at 42.; OSBA M.B. at 2.**

In their first exception, the Joint Applicants essentially argue that any potential change in the purchase price by the variance adjustment should not be problematic because the Commission is not required to determine if the total purchase price is reasonable and in the public interest in the context of the current application proceeding. Subsequently, in their Exception No. 2, the Joint Applicants make the related argument that the Commission does not need the final acquisition price in this proceeding in order to approve the acquisition.

The OSBA's primary issue throughout this case is the Variance Adjustment as 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 close 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.²

² OSBA M.B. at 2.

As noted by the ALJs, the total purchase price, which will be modified by the variance adjustment is unknown at present.³ As the OSBA explained previously, the Variance Adjustment is essentially a penalty for moving Scranton area customers towards PAWC's statewide average rate for wastewater and should be rejected.⁴

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."⁵

As set forth in the OSBA's Main Brief, 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

³ R.D. at 28.

⁴ OSBA M.B. at 2-4 *citing* OSBA St. No 1 at 2.

⁵ 66 Pa. C.S. §1303 (*emphasis added*).

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).⁶

In the event that a Variance Adjustment is paid, either by PAWC to Scranton, or refunded to Scranton area customers, PAWC has not yet determined how to treat the Variance Adjustment for ratemaking purposes.⁷ 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 in clear violation of the plain language of Section 1303 of the Public Utility Code.⁸

As correctly noted by the ALJs “[i]f the Commission were to approve the application now, the issue of the reasonableness of the variance adjustment would already be decided when the variance adjustment amount is actually calculated. In that case, the sole issue to be determined by the Commission in the future...would be whether the variance adjustment was calculated correctly, in accordance with the formula set forth in

⁶ OSBA Main Brief at 3 *citing* OSBA Statement No. 1 at 2

⁷ OSBA Main Brief at 4.

⁸ 66 Pa. C.S. §1303 (*emphasis added*).

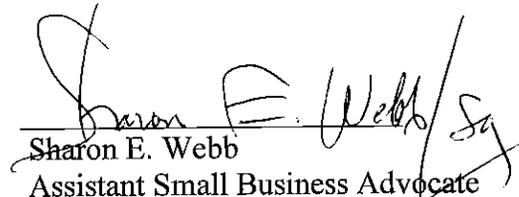
Section 7.07 of the APA, not whether the variance adjustment, or final purchase price is reasonable.”⁹

⁹ R.D. at 30.

III. CONCLUSION

WHEREFORE, The OSBA respectfully requests that the Pennsylvania Public Utility Commission adjudicate this proceeding in accordance with the arguments presented herein, deny PGW's Exceptions Nos 1 and 2, and affirm the Recommended Decision which denies the Application. In the alternative, should the Commission modify the Recommended Decision and somehow 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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