

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

Joint Application of Pennsylvania-American Water Company and Sewer Authority of the City of Scranton for Approval of (1) the transfer, by sale, of substantially all 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

**PUBLIC MEETING: October 6, 2016
2537209-OSA**

Docket No. A-2016-2537209

DISSENTING STATEMENT OF VICE CHAIRMAN ANDREW G. PLACE

I first want to commend Administrative Law Judges (ALJs) David A. Salapa and Steven K. Haas for effectively presiding over an adversarial evidentiary hearing and thoroughly analyzing the evidentiary record in this complex proceeding. I also want to thank the Commission's advisory Staff for providing their analysis and information including timely answers to various inquiries.

Let me emphasize that I am acutely sensitive to the financial plight of the City of Scranton and the fact that it has been in the status of an Act 47 distressed municipality since 1992.¹ There is no doubt that the present overall transaction "is a cornerstone of the City's economic recovery that has been delayed for almost twenty five years," including but not limited to its budget and pension fund.² I am also aware of this Commission's Policy Statement "that further consolidation of water and wastewater systems within this Commonwealth may, with appropriate management, result in greater environmental and *economic* benefits to customers."³

I believe that the evaluation of the "economic benefits to customers" for such transactions should include *both* the customers of the acquired water and/or wastewater system and the *existing* customers of the acquiring system consistent with applicable parameters of statutory law. There is no doubt that this transaction will produce economic benefits for the City of Scranton and the current customers of the Scranton Sewer Authority (SSA). Similarly, the evidence of record makes it clear that Pennsylvania-American Water Company (PAWC) has the requisite technical, managerial, and financial capabilities and resources to manage SSA's system and proceed with a series of required capital improvements.

However, this transaction and the mandated capital improvements for the SSA system will not produce positive economic benefits for the existing base of PAWC customers. The existing customer base of PAWC will be called upon to absorb substantial and "socialized" costs for this transaction and for the mandated improvements to the SSA system.⁴ This will take place even with the subtraction of

¹ Joint Applicants, M.B., at 53, citing the Municipalities Financial Recovery Act, Act of 1987, P.L. 246, No. 47 ("Act 47)."

² Joint Applicants, M.B. at 52, 55

³ Acquisitions of Viable Water and Wastewater System – Statement of Policy, 52 Pa. Code 69.721(a) (emphasis added).

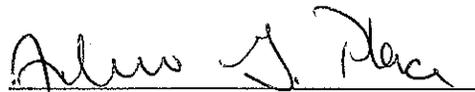
⁴ SSA is obligated under a consent decree with the Pennsylvania Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency (U.S. EPA) "to implement a long term control plan (LTCP) that requires

the “variance adjustment” in the amended asset purchase agreement (APA) that the Joint Applicants submitted during the Reply Exceptions stage of the underlying proceeding.⁵ The Office of Consumer Advocate (OCA) persuasively argues that PAWC’s existing customer base “will be required to support nearly \$200 million in capital improvements just to the SSA system,”⁶ even though SSA is not a financially distressed entity.⁷ Thus, I remain unconvinced that on a stand-alone and total cost basis SSA’s needed capital improvements could be financed with a lower cost of capital (including tax effects) by an investor-owned public utility. Although this Commission under *Popowky v. Pa. P.U.C.* “is not required to secure legally binding commitments, or to quantify benefits *where this may be impractical, burdensome, or impossible*,”⁸ relevant, substantial and affirmative benefits are not present for the existing customer base of PAWC in this transaction. Rather, this existing customer base is being called upon to absorb significant and well documented net economic costs as a result of PAWC’s acquisition of the SSA system. Consequently, the totality of the circumstances and the available economic analysis do not support the approval of the Joint Application at issue today under the relevant statutory standards of Sections 1102 and 1103 of the Public Utility Code. 66 Pa. C.S. §§ 1102 and 1103.

I believe that the acquisition of the SSA system by PAWC is clearly inimical for the existing customer base of PAWC as the relevant economic costs do not outweigh the few and intangible benefits of the transaction.

Thus, for the foregoing stated reasons, I respectfully dissent.

DATED: October 6, 2016



Andrew G. Place
Vice Chairman

approximately \$140 million in capital investment over a 25 year period ending December 1, 2037.” Initial Decision (I.D.), at 7, Finding of Fact No. 19.

⁵ See generally Joint Applicants, Replies of Joint Applicants, Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton, to the Exceptions of the Office of Consumer Advocate, Appendix A.

⁶ OCA, M.B., at 33.

⁷ OCA, M.B., at 39 (SSA’s strong bond rating and healthy financial profile including strong debt service coverage and liquidity). See also Joint Applicants, M.B., at 57 (“While the Authority [SSA] has been able to maintain a relatively strong financial position in spite of the City’s financial distress, Mr. Cross observed that this position would become severely challenged by the extent of the necessary tax increases and the corresponding inability of residents and businesses to keep up with them”).

⁸ *Popowsky v. Pa. Pub. Util. Com’n*, 937 A.2d 1040, 1057 (Pa. 2007) (emphasis added).