

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Joint Application of Aqua Pa. and the
Borough of Phoenixville for approval of 1) :
the acquisition by Aqua of the water system :
assets of Phoenixville used in connection :
with water service provided by Phoenixville :
in East Pikeland and Schuylkill Townships, :
Chester County, and in Upper Providence :
Township, Montgomery County, PA; and 2) :
the right of Aqua to begin to supply water :
service to the public in portions of East :
Pikeland Township, Chester County, and :
Upper Providence Township, Montgomery :
County, PA and 3) the abandonment by :
Phoenixville of public water service in East :
Pikeland Township, Chester County, and in :
Upper Providence Township, Montgomery :
County, and to certain locations in :
Schuylkill Township, Chester County, PA :

Docket Nos. A-2018-2642837 and
A-2018-2642839

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

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, Aqua Pennsylvania, Inc. (Aqua) and the Borough of Phoenixville seek Commission approval for the acquisition of certain water system assets of the Borough of Phoenixville (Phoenixville). Aqua also seeks approval to provide water service in the areas served by Phoenixville, outside of

the Borough, and approval of its proposed tariff for service of the transferred customers. Additionally, a 10-year Water Supply Agreement between Phoenixville and Aqua is attached to the Application as Exhibit G1. The Applicants ask the Commission to approve this contract pursuant to 66 Pa. C.S. § 507.

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, 5th 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.

Continuous Provision of Service to Customers at Just and Reasonable Rates

7. The Water Supply Agreement between Aqua and Phoenixville expires in 10 years. If those parties do not reach an agreement to renew the contract, the Application does not indicate how Aqua will continue to provide water service to the requested territory and at what cost. This question was raised by the Bureau of Technical Utility Services in data requests served on February 12, 2018. In addition, the Water Supply Agreement contains a partial assignment of rights and obligations under a 1986 Water Supply Agreement between Phoenixville and Citizen Utilities Home Water Company (Citizens). PAWC is the successor in rights and obligations of Citizens. PAWC has not agreed to that assignment and has filed a Protest to the Joint Applicants' request to have the Water Supply Agreement approved without its approval. The OCA submits that additional information is necessary to determine if the Water Supply Agreement is reasonable and how the transaction will substantially and affirmatively benefit the acquired customers, as well as Aqua's and PAWC's existing customers.

Proposed Service Territory

8. PAWC also raised questions whether the service territory at issue overlaps with PAWC's existing certificated territory. The OCA submits that additional information is necessary to determine the bounds of Phoenixville and PAWC's certificated service territory before further action is taken on the proposed Application.

Proposed Water System Assets

9. Finally, PAWC raised a question whether some of the assets proposed to be acquired may be owned by PAWC rather than Phoenixville. The OCA submits that additional information is necessary before further action is taken on the proposed Application.

10. The OCA reserves the right to raise additional issues as the case proceeds.

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, regarding the Application.

Respectfully submitted,

Erin L. Gannon/cm

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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 Aqua Pa. (Aqua) of the Borough of Phoenixville (Borough)

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and Borough 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.

Aqua serves over 430,000 water customer accounts in Pennsylvania. The Borough serves approximately 556 customers in East Pikeland Township, Chester County, Upper Providence Township, Montgomery County and to portions of Schuylkill Township, Chester County, Pennsylvania.