

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

January 14, 2019

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

Re: Application of Pennsylvania -American Water
Company Pursuant to Sections 507, 1102 and
1329 of the Public Utility Code for Approval
of its Acquisition of the Wastewater Assets of
Exeter Township
Docket No. A-2018-3004933

Dear Secretary Chiavetta:

Attached for electronic filing 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,

A handwritten signature in blue ink that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Bureau of Technical Utility Services (email only)
Certificate of Service

*265158

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania- :
American Water Company Pursuant :
to Sections 507, 1102 and 1329 of :
the Public Utility Code for Approval : Docket No. A-2018-3004933
of its Acquisition of the Wastewater :
Assets of Exeter Township :

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 14th day of January 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Erika McClain, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

David P. Zambito, Esquire
Jonathan P. Nase, Esquire
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

John Evans, Esquire
Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Susan Simms Marsh, Esquire
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Samuel W. Cortes, Esquire
Fox Rothschild LLP
747 Constitution Drive
Exton, PA 19341

Barnett Satinsky, Esquire
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222

Exeter Township
4975 DeMoss Road
Reading, PA 19606

Joan E. London, Esquire
Kozloff Stoudt
2640 Westview Drive
Wyomissing, PA 19610

Michael A. Setley, Esquire
Georgeadis II Setley, LLC
4 Park Plaza
Wyomissing, PA 19610

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Harrison W Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717)783-7152
Dated: January 14, 2019
*265159

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American :
Water Company. Pursuant to Sections 507, :
1102 and 1329 of the Public Utility Code for : Docket No. A-2018-3004933
Approval of its Acquisition of the Wastewater :
System Assets of Exeter Township :

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 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq* and 66 Pa. C.S. § 1329. Through this Application, filed on December 5, 2018¹, Pennsylvania-American Water Company (PAWC or Company) seeks Commission approval for the acquisition of the wastewater collection and treatment system of Exeter Township (Township), Berks County, and the right of PAWC to provide wastewater service to Exeter Township, portions of Alsace and Lower Alsace Townships², to one bulk service interconnection point with Alsace Township, and to four bulk service interconnections points with St. Lawrence Borough, Berks County and to the

¹ The original application was filed on September 25, 2018 and rejected by the Commission on October 1, 2018 by Secretarial letter to the Applicant.

² On December 10, 2018, Exeter Township filed an application *nunc pro tunc* for a certificate of public convenience from the Commission related to wastewater service to the public in Lower Alsace Township. Application of Exeter Township for Certificate of Public Convenience at Docket No. A-2018-3006505. PAWC indicates that it hopes to consolidate the Exeter Township application with the applications referenced in this pleading. Application at 5. On December 14, 2018, the OCA filed a Petition to Reject or Hold In Abeyance Acceptance of the Application and raised its concerns that the notice included in the revised Application does not comply with 52 Pa. Code Section 53.45, and the Commonwealth Court's Decision in McCloskey v. Pa. Public Utility Commission, 1624 CD 2017 (Oct. 11, 2018) (New Garden). On December 20, 2018, the Bureau of Investigation and Enforcement (I&E) filed a Motion to Reject or Hold in Abeyance PAWC's Amended Application.

Windy Willows development in Alsace Township, which is not currently served by Exeter Township. PAWC also seeks approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code, as well as approval of the collection of a Distribution System Improvement Charge (DSIC) prior to the Township's first post-acquisition rate case, accrual of Allowance for Funds Used During Construction (AFUDC) for post-acquisition projects not recovered through the DSIC for book and ratemaking purposes, and deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Application at 2-3. PAWC also requests the approval of the Asset Purchase Agreement (APA) with Exeter Township as well as other municipal agreements pursuant to Section 507 of the Public Utility Code. Application at 3-4. The APA requires Exeter to increase its current wastewater rates at least 60 days in advance of closing of the transaction. Appendix A-24-a at Article 7.1. Exeter Township provides direct wastewater service to 9,015 customers, including 8,747 residential, 236 commercial, 12 industrial, and 20 municipal customer connections. Application at 6.

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 attorney for the purpose of receiving service of all documents in this proceeding is Christine Maloni Hoover, Senior Assistant Consumer Advocate.

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. An increase in rates involves a substantial property right and ratepayers are entitled to notice of a Commission's administrative proceeding in which a decision is made regarding rates. The notice provided with PAWC's Application does not meet the fundamental requirements under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52

Pa. Code Section 53.45(b)(1-4) and the order entered in McCloskey v. Pa. Public Utility Commission, 1624 CD 2017 (Oct. 11, 2018) (New Garden).

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market valuation or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This recently added provision is an alternative to the use of original cost, less depreciation for ratemaking purposes, when a public utility acquires municipal water and wastewater assets. PAWC proposes to pay \$96,000,000 per the Asset Purchase Agreement of May 1, 2018. Appendix A-6. The original cost of the assets is \$68,404,345, and the original cost less depreciation is \$40,057,634. Appendix A-5.

8. The Exeter Township Utility Valuation Expert's (UVE) appraisal conducted by Gannett Fleming was \$104,120,000. Exeter St. 2 at 10. The PAWC UVE's appraisal conducted by Associated Utility Services, Inc. (AUS) was \$101,817,000. Appendix A-5. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$102,968,500. PAWC St. 4 REV at 6. The valuation experts were paid \$21,775 to date for AUS and of \$74,920 for Gannett Fleming for the Fair Market Value Appraisals. Appendix A-8. PAWC estimates that it will incur transaction and closing costs of \$1,100,000 to \$1,300,000. Appendix A-12.

9. Prior to closing, PAWC and Exeter agreed that Exeter will increase the rates that it charges to its customers. See, Appendix A-24-a at Article 7.1; see also Application at 11. The increase went into effect on January 1, 2019. PAWC's Responses to the Deficiency Letter of the Bureau of Technical Utility

Services at Response 11. Sewer rates for residential customers are now set at a quarterly service charge of \$31.80, a minimum consumption charge for 5,000 gallons of \$46.90, a minimum billing charge of \$78.70, and a charge for each 1,000 gallons over the minimum of \$9.38. Response of Exeter Township to TUS Deficiency Letter at Response 11, Resolution No. 2018-37. PAWC proposes to charge Exeter Township customers the customer charge and wastewater consumption rates in effect at closing, i.e, the rates that were increased on January 1, 2019. Application at 11. PAWC testimony indicates that “[a]fter PAWC closes the Transaction, System customers will be subject to PAWC’s prevailing wastewater tariff on file with the Commission with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service.” PAWC St. 3 at 7.

10. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code, and the 14th Amendment to the Constitution of the United States.

a. The OCA submits that the notice included in the revised Application does not comply with the 14th Amendment of the Constitution of the United States, 52 Pa. Code Section 53.45, and the Commonwealth Court’s Decision in McCloskey v. Pa. Public Utility Commission, 1624 CD 2017 (Oct. 11, 2018) (New Garden).

b. The valuation information provided with the Application is

not sufficient to determine whether PAWC’s ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation. In addition, PAWC states that it is not proposing a rate stabilization plan; however, it provides testimony in support of its “rate commitments.” Application at 7, footnote 2. The OCA will examine the proposal to determine whether it is a rate stabilization plan and whether it is adequately supported and reasonable or alternatively whether the rate commitments are reasonable.

c. PAWC would charge the following rates:

All Customer Classes

Exeter Township	
Service Charge per month including first 1,700 gallons	\$ 26.23
Usage Charge over initial 1,700 gallons per 1000 gallons	\$ 0.9380

The OCA will examine the current rates and the proposed tariff.

d. Information is provided regarding the estimated costs of planned investment in the system. PAWC estimates that the capital costs for the 10-year capital plan for the Exeter system will be \$30.1 million. PAWC St. 3 at 7; PAWC Exh. DRK-1. The OCA will examine the information to determine what impact the capital improvements will have on the cost of service. The OCA will also examine the impact that the costs will have on the rates of existing and acquired customers. Preliminarily, the OCA notes that if the application is approved, and the rate increase related to the \$96,000,000 ratemaking rate base requested by

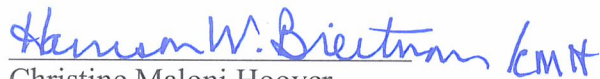
PAWC were applied only to the Exeter Township customers, the rates charged to Township customers would increase approximately 68% over the pro forma revenues in the first year of ownership. See, Affidavit of Ashley E. Everette at page 4. The OCA further notes that if the rate increase were applied equally to Exeter Township and PAWC non-Scranton wastewater customers, the rates charged would increase approximately 16% over the pro forma 2018 sales revenues. Id. Moreover, if the increase were applied only to existing PAWC non-Scranton wastewater customers, the rates charged to PAWC non-Scranton wastewater customers would increase approximately 22% over the pro forma 2018 sales revenues. Id. Thus, if the revenue requirement to existing PAWC wastewater customers includes the cost of ownership of the Exeter Township system, existing PAWC non-Scranton wastewater customers' rates could increase approximately 16%-22% due to this acquisition. Id.

11. The OCA submits that additional information is necessary to determine if the proposed rates, and PAWC's request for an approved rate base of \$96,000,000 for the Exeter acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

12. The OCA submits that PAWC's notice to ratepayers must be amended and that additional information is necessary to determine how the transaction will substantially and affirmatively benefit PAWC's existing customers.

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 further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, regarding the Application.

Respectfully submitted,



Christine Maloni Hoover
Senior Assistant Consumer Advocate
Pa. Attorney No. 50026
CHoover@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
Pa. Attorney No. 320580
HBreitman@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

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

Dated: January 14, 2019
265160

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 Wastewater Company (PAWC or Company) of the Township of Exeter (Exeter) wastewater assets.

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 the Exeter 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 ensure that the ratepayers receive proper notice in accordance with the Public Utility Code and public policy. The Acting Consumer Advocate will investigate the proposed acquisition to determine if there are substantial affirmative public benefits 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 65,048 wastewater customers in Pennsylvania. Exeter Township provides direct wastewater service to 9,015 customers, including 8,747 residential, 236 commercial, 12 industrial, and 20 municipal customer connections.