

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 9, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pa. Public Utility Commission  
v.  
Delaware Sewer Company  
Docket No. I-2016-2526085

Dear Secretary Chiavetta:

Attached for electronic filing are the Comments of the Office of Consumer Advocate 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 "Erin L. Gannon".

Erin L. Gannon  
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Enclosures  
cc: Certificate of Service  
\*271885

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :  
v. : Docket No. I-2016-2526085  
Delaware Sewer Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, 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 9th day of May, 2019.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Instituted per Section 529 into	:	
Whether the Commission Shall Order a	:	Docket No.: I-2016-2526085
Capable Public Utility to Acquire Delaware	:	
Sewer Company	:	

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COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE  
ON TENTATIVE OPINION AND ORDER

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The Office of Consumer Advocate (OCA) appreciates the opportunity to provide comments to the Public Utility Commission’s (Commission or PUC) Tentative Opinion and Order entered on April 29, 2019, in the above-captioned proceeding. As set forth below, the OCA respectfully requests that the Commission decline to modify the proposed Settlement.

**I. INTRODUCTION**

An investigation was initiated pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529, into whether the Commission should order a capable public utility to acquire the wastewater system assets of Delaware Sewer Company (DSC). On October 1, 2018, the Pennsylvania-American Water Company (PAWC), DSC, the Commission’s Bureau of Investigation & Enforcement and the Office of Consumer Advocate (OCA), collectively “Joint Petitioners,” filed with the Commission a Joint Petition for Approval of Settlement of All Issues (Joint Petition or Settlement) in which all issues in this and related proceedings at Commission Docket Nos. C-2017-2587178, P-2014-2404341 and Pennsylvania Commonwealth Court Docket Nos. 1561 C.D. 2015 and 1705 C.D. 2015 were resolved. On March 20, 2019, the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Steven K. Haas was issued in which he

recommended that the Joint Petition be granted, and the Settlement be approved, without modification.

On April 29, 2019, the Commission entered a Tentative Opinion and Order, in which the Commission stated its support for approving the acquisition by PAWC but expressed concern that the Recommended Decision and Joint Petition could incorporate non-DSIC eligible property into PAWC's Long Term Infrastructure Improvement Plan (LTIIP). Tentative Order at 3-4 (citing R.D. at Ordering Paragraph No. 5 and Joint Petition, at 7, ¶24). As summarized by the Commission, the Recommended Decision incorporates the entirety of PAWC's Plan for Improvements (PFI) for the DSC system into PAWC's existing LTIIP, deeming these to be an approved Petition for Modification pursuant to Section 121.5(a) of our Regulations, 52 Pa. Code § 121.5(a).<sup>1</sup> Tentative Order at 4.

In response to its concern that the LTIIP should only include DSIC eligible property, the Commission makes two modifications to the Recommended Decision and Settlement. First, the Commission requires:

that that the PFI submitted by PAWC be approved on the condition it is consistent with Section 529(j) of the Code, 66 Pa. C.S. § 529(j). Accordingly, the eligible property and expenditures from the PFI subject to recovery through the Distribution System Improvement Charge (DSIC) mechanism shall be incorporated into PAWC's LTIIP.

Second, the Commission provides special accounting treatment for non-DSIC eligible property:

Further, to the extent the Settlement, and its accompanying PFI, contain non-DSIC eligible property, we shall permit PAWC to establish a regulatory asset in order to

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<sup>1</sup> Paragraph 24 of the Joint Petition states:

The Joint Petitioners request that the ALJ recommend the approval of, and the Commission approve, the Plan for Improvements and allow the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service. The Joint Petitioners further request that the ALJ and the Commission treat the Plan for Improvements as a petition for modification of PAWC's Long Term Infrastructure Improvement Plan ("LTIIP"), as approved by the Commission at Docket No. P-2017-2585707.

claim appropriate ratemaking and revenue recovery of accrued depreciation and allowance for funds used during construction on those improvements that cannot otherwise be included in the DSIC mechanism in PAWC's next base rate proceeding.

Tentative Order at 4.

## II. COMMENTS

The OCA does not oppose the Commission's first modification to the Recommended Decision and Joint Petition. However, the OCA seeks to clarify that, as the Commission has previously concluded, the inclusion of property in the LTIP is not dispositive of whether the cost of that project will be afforded recovery through the DSIC.<sup>2</sup> For example, when it approved UGI Central Penn Gas, Inc.'s initial LTIP, the Commission stated:

While the Commission's Final Implementation Order stated, at page 18, that the LTIP "need only address the specific property eligible for DSIC recovery," the inclusion of arguably non-DSIC-eligible property does not void the LTIP application, nor is the inclusion of such property in the LTIP dispositive of whether the cost of that project will be afforded DSIC recovery.

The OCA requests that the Commission reaffirm its holding, here, by adding similar language to the Final Order. With this understanding, the OCA submits that the Commission's first modification is unnecessary.

Respectfully, the OCA does not agree with the Commission's second modification, which permits PAWC to establish a regulatory asset for costs that are not DSIC-eligible. The Joint Petitioners agreed and requested that the Commission allow "the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service." Joint Petition, ¶24. Paragraph 29.d of the Joint Petition

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<sup>2</sup> See, e.g., Petition of UGI Penn Natural Gas, Inc. for Approval of its LTIP, Docket No. P-2013-2398835, Order at 24 (Sept. 11, 2014); see also Petition of Peoples Natural Gas Co. LLC for Approval of its LTIP, Docket No. P-2013-2344596, Order at 43 (May 23, 2013); Petition of Peoples TWP for Approval of its LTIP, Docket No. P-2013-2344595, Order at 42-43 (May 23, 2013).

specifically provides for PAWC to recover return on and of the cost of (reasonable and prudent) upgrades to the wastewater system in future PAWC rate proceedings. The Joint Petitioners also agreed that PAWC's LTIP should be amended so the Company can begin recovering the DSIC-eligible portion of those costs before its next base rate case. The Joint Petitioners did not agree to special accounting treatment for the non-DSIC eligible costs. Rather, in accordance with the terms of the Joint Petition and traditional ratemaking, those costs would be treated the same as any other non-DSIC eligible costs that PAWC incurs to make improvements to other systems acquired between base rate cases. *E.g.*, Borough of Turbotville - Water, Docket No. A-2018-3004191 (Order entered Jan. 17, 2019).

The proposed accounting treatment for non-DSIC eligible costs appears to be modeled after the accounting treatment afforded by Section 1329 of the Public Utility Code. Section 1329(f) states that "depreciation on an acquiring public utility's post-acquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes." 66 Pa. C.S. § 1329(f)(2). Importantly, Section 1329 is strictly limited to acquisitions of municipal water and wastewater systems. 66 Pa. C.S. § 1329(g). The present acquisition arose from an investigation pursuant to Section 529, 66 Pa. C.S. § 529. Section 529 does not provide special accounting treatment for costs incurred pursuant to the PFI.

For all of these reasons, the OCA respectfully requests that the Commission decline to modify the carefully crafted terms of settlement agreed upon by PAWC and the other Joint Petitioners, by providing additional cost recovery for PAWC.

### III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully submits that the Commission's modification to the provision regarding PAWC's amended LTIP is unnecessary. As the Commission has previously ruled, inclusion of the property in the LTIP is not dispositive of whether the cost of that project will be afforded recovery through the DSIC. The OCA respectfully submits that the Commission's proposed modification to the cost recovery provisions of the Joint Petition for Approval of Settlement of All Issues, filed on October 1, 2018, should not be adopted as it is contrary to the agreed-upon ratemaking principles contained in the Settlement.

Respectfully Submitted,



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DATE: May 9, 2019