


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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

 @pa_oca

 /pennoca

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

August 16, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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 Water System Assets
of Steelton Borough Authority
Docket No. A-2019-3006880

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions
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
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachments

cc: Honorable Steven K. Haas
Honorable Benjamin J. Myers
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Certificate of Service
*277658

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American :
Water Company Pursuant to Sections :
507, 1102 and 1329 of the Public Utility : Docket No. A-2019-3006880
Code for Approval of its Acquisition of :
the Water Assets of Steelton Borough :
Authority :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Exceptions, 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 16th day of August 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Scott B. Granger
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

Erin K. Fure, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Kathy L. Pape, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166

Susan Simms Marsh, Esquire
Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720T
St. Louis, MO 63105

/s/ Erin L. Gannon

Erin L. Gannon

Senior Assistant Consumer Advocate

PA Attorney I.D. # 83487

E-Mail: EGannon@paoca.org

Christine Maloni Hoover

Senior Assistant Consumer Advocate

PA Attorney I.D. # 50026

E-Mail: CHoover@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

*277661

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Application of Pennsylvania-American :
Water Company Pursuant to Sections 507, :
1102 and 1329 of the Public Utility Code for : Docket No. A-2019-3006880
Approval of its Acquisition of the Water :
Assets of Steelton Borough Authority :

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@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
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: August 16, 2019

TABLE OF CONTENTS

I. INTRODUCTION1

II. EXCEPTIONS2

 OCA Exception No. 1: The ALJs Adopt Facts Disputed by Some of the Joint
 Petitioners, Not Contained in the Joint Petition and
 Unnecessary for Approval of the Joint Petition..... 2

 OCA Exception No. 2: Whether the March/April Customer Notice Was Adequate
 and Sufficient Is a Contested Issue That the Parties Did
 Not Resolve in Reaching the Proposed Settlement 5

III. CONCLUSION.....8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>HIKO Energy, LLC v. Pa. PUC,</u> 163 A.3d 1079 (Pa. Cmwlth. 2017)	3
Administrative Decisions	
<u>Pa. PUC v. MXenergy Electric Inc.,</u> Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).....	2
Statutes	
66 Pa. C.S. § 1329.....	7
Regulations	
52 Pa. Code § 5.533	1
52 Pa. Code § 53.54	7

I. INTRODUCTION

On August 9, 2019, Administrative Law Judges (ALJs) Steven K. Haas and Benjamin J. Myers issued a Recommended Decision recommending approval, without modification, of the Joint Petition for Settlement (Joint Petition) filed on July 2, 2019 and entered into by Pennsylvania-American Water Company (PAWC), Steelton Borough Authority (Steelton), the Office of Consumer Advocate (OCA), the Bureau of Investigation & Enforcement (I&E) and the Office of Small Business Advocate (OSBA).

The OCA is not withdrawing from the Joint Petition. The OCA fully supports the ALJs' recommendation to approve the Joint Petition and respectfully submits these Exceptions for the limited purpose of clarifying the basis and bounds of the Joint Petition related to two specific material, contested issues. Therefore, the OCA files the following Exceptions pursuant to Section 5.533 of Commission's regulations. 52 Pa. Code § 5.533.

II. EXCEPTIONS

OCA Exception No. 1: The ALJs Adopt Facts Disputed by Some of the Joint Petitioners, Not Contained in the Joint Petition and Unnecessary for Approval of the Joint Petition.

The ALJs correctly noted that Commission policy promotes settlements, as settlements promote judicial efficiency by lessening the time and expense the parties must expend in litigation. R.D. at 14. As stated by the ALJs, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Id. citing Pa. PUC v. MXenergy Electric Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013). Importantly, the ALJs correctly stated that the focus of the inquiry for determining whether a proposed settlement should be recommended for approval is whether the proposed settlement terms and conditions are in the public interest. Id.

The OCA supports the ALJs' recommendation to approve the Joint Petition without modification. The OCA submits, however, that certain findings made by the ALJs should not be adopted by the Commission. This is because the findings address material facts that were disputed by the parties. The parties elected not to continue to litigate those material facts and, instead, chose to compromise their positions in order to reach a settlement. Moreover, the OCA submits that the findings at issue are not needed to determine whether the Settlement is in the public interest.

Relying on statements that were subject to opposing testimony undermines the Settlement and the basis for the resolution of the opposing positions through the Settlement. By resolving the issues raised by the parties through settlement, the signatory parties have chosen to leave the record as it stands while establishing the substantive provisions of the Settlement as the provisions that must be judged to be in the public interest. It is not necessary, reasonable, or

appropriate to use contested facts as findings that are then used to support the determination that the Settlement is in the public interest.¹ The OCA is unable to address the evidence that it presented to rebut those contested facts because, as a signatory to the Joint Petition, it did not file a brief that would have provided legal argument regarding the contested facts.

As such and as discussed further below, the OCA respectfully requests that the following finding should not be adopted by the Commission:

In addition to the affirmative public benefits identified above and in our review of all of the settlement terms, additional public benefits will be realized as a result of approval of the Joint Petition. These benefits include:

...

- PAWC's existing customers will benefit, in the long term, since adding the Steelton customer to PAWC's overall system will allow costs of operating the system to be spread over a larger customer base. (PAWC Stmt. 1, p. 14).

R.D. at 30.

The OCA filed testimony containing compelling evidence to dispute this finding. The OCA's expert witness directly challenged the general statement that the proposed acquisition would benefit existing customers by spreading costs over a larger customer base because Ms. Everett found that the transaction resulted in increasing costs, not declining average costs.² See

¹ The Commonwealth Court has previously noted that "Factual findings must be supported by substantial evidence, which is 'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" HIKO Energy, LLC v. Pa. PUC, 163 A.3d 1079, 1124 (Pa. Cmwlth. 2017) citing Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlth. 2015).

² For example, OCA witness Everett testified as follows:

Yes. As discussed above, when the cost to serve acquired customers is higher than the cost to serve existing customers, the addition of more customers does not decrease overall costs per customer. The cost per acquired customer at the proposed ratemaking rate base is higher than the cost per existing customer, and the cost per acquired customer is expected to substantially increase in the near future. For a "relatively long period of time," the acquired customers will likely not be able to pay for any costs of current

OCA St. 1 at 8-10, 12-17, 21-22; OCA St. 1S at 2, 6-9. If the case had proceeded to litigation, as opposed to settlement, the OCA would have briefed this contested issue. Instead of litigating, however, the parties reached a resolution through a Settlement in which certain issues would be put aside in furtherance of compromise in order to agree upon a Settlement between the parties that would be in the public interest. As settlements allow flexibility in reaching amicable resolutions as long as the settlement is in the public interest, the Joint Petition purposefully did not address the testimony by PAWC or the testimony by OCA on this contested issue.

The focus of the inquiry for determining whether a proposed settlement should be recommended for approval is whether the proposed settlement terms and conditions are in the public interest. See R.D. at 25-26. The Recommended Decision goes beyond the scope of the proposed Settlement terms by re-introducing this issue and adopting PAWC's contested testimony as fact. As such, the OCA submits that the Commission should not adopt the ALJs' finding that "PAWC's existing customers will benefit, in the long term, since adding the Steelton customer to PAWC's overall system will allow costs of operating the system to be spread over a larger customer base. (PAWC Stmt. 1, p. 14)." R.D. at 30.

PAWC customers, and the "[sharing of] future infrastructure investment costs" is likely to only benefit Steelton customers.

OCA St. 1 at 16. Ms. Everette stated further:

The small amount of identified operations expense savings is far outweighed by costs of adding the \$22.5 million increase in rate base. The level of capital additions projected by PAWC for the Steelton system indicates that for many years, the additional costs of the Steelton system will far outweigh any benefits to existing customers.

Id. at 21.

OCA Exception No. 2: Whether the March/April Customer Notice Was Adequate and Sufficient Is a Contested Issue That the Parties Did Not Resolve in Reaching the Proposed Settlement.

Relevant to the issue of notice provided to customers about the proposed acquisition of Steelton by PAWC, the Joint Petition provides:

9. On March 11, 2019, PAWC began individual notice to its customers of the Application through a bill insert during a 31-day billing cycle.
10. PAWC provided individual notice of the Application to Steelton customers through a direct mailing on March 29, 2019.
- ...
35. The Joint Petitioners agree that PAWC shall mail the notice attached hereto as Appendix B to existing customers of Steelton notifying them of the settlement in this proceeding concurrently with the filing of this Joint Petition. The Joint Petitioners agree that such notice of settlement provides existing customers of Steelton with adequate notice and opportunity to be heard on this proposed Settlement.

These terms reflect the Joint Petitioners agreement that (1) a notice was provided to existing PAWC and Steelton customers in March/April 2019 regarding the proposed acquisition and (2) a notice was provided to current Steelton customers on July 2, 2019 regarding the proposed Settlement.

The OCA submits that, in certain respects, the ALJs' discussion of customer notice is inconsistent with the terms of settlement reached by the parties. The OCA seeks to clarify the limitations of the proposed Settlement and the purpose and effect of the second customer notice.

First, on page 4 of the Recommended Decision, the ALJs state that "[c]ustomers affected by the proposed sale were notified that a settlement had been reached and that comments or objections to the terms of the settlement could be filed with the Commission." To clarify, not all customers affected by the proposed sale were notified about the proposed Settlement. The

second notice was provided only to existing customers of Steelton and not to PAWC's existing customers. Joint Petition, ¶ 35.

Second, on page 28 of the Recommended Decision, with regard to letters and a petition received from Steelton customers in response to the second notice, the ALJs state:

None of the customers who signed either individual letters or the petition presented any information or analysis in support of their positions against a potential rate increase. These customers had notice and an opportunity to be heard by presenting evidence or testimony when they received individual notice of this proceeding from the company beginning on March 11, 2019. None of those customers took advantage of that opportunity. They all merely indicated their opposition to the potential increase.

The OCA's concern is with the ALJs' statement that the March/April notice provided customers with notice and an opportunity to be heard by presenting evidence or testimony. The adequacy and sufficiency of the March/April notice was challenged by the OCA.³ In particular, the OCA challenged the accuracy and adequacy of providing the same rate impact estimate (\$0.12 per month) to Steelton and PAWC residential customers, when Steelton current average bills differ substantially from Zone 1 rates.⁴ Further, the notice did not inform customers that they could

³ OCA St. 1 at 22-24; Application, App. A-18-d.

⁴ OCA witness Everette stated:

Q. Given that PAWC's water rates are different from Steelton's current water rates, was it accurate to send Steelton customers a notice that indicates they will see the same 12 cent per month increase as existing water customers?

A. No, a notice that informs Steelton customers that their rate impact could be 12 cents per month is inaccurate and insufficient. The notices sent to Steelton customers did not inform them that their rates are likely to increase significantly more than 12 cents per month under single tariff pricing. If Steelton's rates were set in the next rate case to recover Steelton's full cost of service, the bill for a Steelton customer could be \$45.16, an increase of \$14.44. Single tariff pricing at PAWC's existing Zone 1 rates would be an increase of \$30.13 per month to current Steelton bills. In PAWC's next rate case, Steelton's rates are unlikely to increase by only 12 cents per month (0.4%) given the facts of this case and based on the actual results of PAWC's most recent base rate case.

OCA St. 1 at 23 (footnotes omitted).

request a Public Input Hearing.⁵ The Joint Petition does not adopt or reject the OCA's position regarding the first notice. See Joint Petition, ¶¶ 9, 10. Rather, the proposed Settlement reflects a compromise of the parties' positions. Specifically, to address the OCA's concerns about the accuracy and adequacy of the March/April notice, the Joint Petition provided for a second notice to be sent to Steelton customers. Id., ¶ 35. Given the procedural posture of the case and statutory deadline for disposition, the parties agreed the second notice would inform customers about the terms of the proposed Settlement and that, in a future rate case, rates for Steelton residential customers might increase by more than \$12.00 per month.⁶ Id., App. B.

The Joint Petition also helps to address the OCA's concerns regarding the March/April notice by providing a template for customer notices and formulas for the calculation of rate impact that PAWC will use in future acquisition proceedings that the Company files under Section 1329. 66 Pa. C.S. § 1329. Joint Petition, ¶ 36 and Apps. C-G. As such, in future cases, affected customers will receive notice at the beginning of the case with rate impact information calculated in a manner supported by the OCA, and providing more time to respond and participate in the development of the evidentiary record by presenting evidence or testimony.

In summary, the OCA seeks to clarify that not all customers affected by the proposed sale were notified about the proposed Settlement. R.D. at 4. The OCA also submits that the ALJs' statements regarding the disputed March/April notice (R.D. at 28) should not be adopted by the Commission and are not needed to determine whether the Settlement is in the public interest.

⁵ Id.; 52 Pa. Code § 53.54; OCA St. 1 at 24.

⁶ Evidentiary hearings were held on June 10, 2019 and the second notice was mailed to Steelton customers on July 2, 2019. Joint Petition, ¶ 35 and App. B. Customers were afforded until July 12, 2019 to respond. Id. In order for the customers to provide evidence or testimony in response to the second notice, it would have been necessary to schedule a Public Input Hearing in the brief time before the ALJs issued their Recommended Decision on August 9, 2019.

The OCA fully supports the ALJ's ultimate recommendation to approve the Joint Petition without modification.

III. CONCLUSION

The OCA respectfully requests that the Commission clarify, or refrain from adopting, certain aspects of the Recommended Decision, consistent with the foregoing Exceptions. With that qualification, the OCA supports the ALJs' recommendation to approve the Joint Petition for Settlement without modification.

Respectfully submitted,



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

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

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Dated: August 16, 2019
277656