


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 12, 2019

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

Re: Indian Springs Water Company
Docket No. M-2019-3011972

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed 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

Enclosures:

cc: The Honorable Steven K. Haas, ALJ
Certificate of Service

*280301

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|--|---|---------------------------|
| Pennsylvania Public Utility Commission | : | Docket No. M-2019-3011972 |
| | : | Section 529 Investigation |
| v. | : | |
| | : | |
| Indian Springs Water Company | : | |

PREHEARING CONFERENCE MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the October 30, 2019 Prehearing Conference Order, the Office of Consumer Advocate (OCA) provides the following:

I. BACKGROUND

Indian Springs Water Company (Indian Springs or Company) provides water service to approximately 54 customers and serves a total population of 137 in the area of Glen Summit in Fairview Township, Luzerne County, Pennsylvania. On August 8, 2019, the Public Utility Commission (Commission) issued an Ex Parte Emergency Order¹ which initiated this proceeding pursuant to 66 Pa. C.S. § 529 and appointed Pennsylvania American Water Company (PAWC) as receiver under Section 529(g). The Ex Parte Order identified ten Notices of Violation issued by the Department of Environmental Protection (DEP) since 2015, a Field Order issued by DEP to Indian Springs on February 7, 2019 following an inspection conducted by DEP personnel on February 6, 2019, and a “Do Not Consume” advisory due to lead and copper exceedances as well as unsanitary conditions of the water system. Further, the Ex Parte Order noted that Indian Springs

¹ See In re: The Indian Springs Water Company, Docket No. M-2019-3011972, (Ex Parte Emergency Order issued Aug. 8, 2019) (Ex Parte Order).

was informed multiple times by DEP that it had been issuing deficient public notices to its customers. The Commission ordered that, in response to the above mentioned circumstances, a receiver—PAWC—should “act immediately to assess and correct conditions that would cause Indian Springs to provide unsafe, inadequate, or unreasonable water service to its customers and the public.”

On August 21, 2019, the OCA filed its Notice of Intervention. The OCA intervened in this proceeding to protect the interests of Indian Springs’ and PAWC’s customers and to ensure that a resolution would be found that was in accordance with applicable statutes.

The Commission held an Initial In-Person Prehearing Conference on August 27, 2019, attended by PAWC, the OCA, and Counsel for Indian Springs. At the hearing, Administrative Law Judge (ALJ) Steven K. Haas and the parties discussed (1) the Section 529 proceeding ordered by the Commission and (2) Indian Springs’ letter submitted in response to the Commission’s appointment of PAWC as receiver without having given the company notice or an opportunity to be heard beforehand.² See Trans. Initial Prehearing Conference at 5. ALJ Haas determined that separate notices would have to be prepared—for both public utilities that provide the same type of service in the area (proximate providers), and current Indian Springs and PAWC customers.

On August 29, 2019, a Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement.

On September 5, 2019, the Commission received a Formal Complaint from Thomas V. Tinsley, a customer of Indian Springs, which was subsequently assigned docket number C-2019-3012933.

² See Pa PUC v. Indian Springs Water Co., Docket No. M-2019-3011972, Transcript of Initial Prehearing Conference, p. 5, (Aug. 27, 2019).

On September 30, 2019, PAWC served Indian Springs' customers with a Notice of Acquisition Investigation and Receivership. Within the notice, PAWC informed customers of the Section 529 investigation and its appointment as receiver of Indian Springs effective August 19, 2019. Additionally, PAWC notified Indian Springs customers that they would be billed at existing Indian Springs rates and that they are entitled to participate in the Section 529 acquisition investigation if they wish to either contact the OCA, file a formal petition by October 21, 2019, or attend a public input hearing, if one is held. On October 1, 2019, the Secretary of the Commission issued a Notice of Section 529 Acquisition and Investigation to proximate service providers and proximate municipalities.

On October 30, 2019, a Prehearing Conference Order was issued establishing a Prehearing Conference on November 13, 2019 and directed that Prehearing Memorandums be filed by the parties on or before November 12, 2019.

The OCA now files this Prehearing Memorandum to set forth the procedure and issues that the OCA believes are relevant to this proceeding.

II. SERVICE ON THE OCA

The OCA will be represented in this matter by Senior Assistant Consumer Advocates Christine Maloni Hoover and Erin L. Gannon and Assistant Consumer Advocate Laura J. Antinucci. Two copies of all documents should be served on the OCA as follows:

Christine Maloni Hoover
Erin L. Gannon
Senior Assistant Consumer Advocates
Laura J. Antinucci
Assistant Consumer Advocate
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III. DISCOVERY

The OCA does not propose any modifications to the Commission's discovery regulations.

IV. WITNESSES

If necessary, the OCA will present the testimony of an expert witness. The OCA specifically reserves the right to call witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that a witness is necessary for any portion of its case, it will notify all parties of record immediately.

V. ISSUES AND EVIDENCE

A. In the interest of efficiency and expedience, the OCA submits that the parties may be able to stipulate to many of the findings set forth in Section 529 of the Public Utility Code regarding Indian Springs' financial, technical and managerial fitness.

B. To the extent that the requisite findings are not stipulated by the parties, the OCA will provide testimony to show that acquisition of Indian Springs would be in the public interest, including evidence to support the findings required by Section 529.

C. The OCA will evaluate the impact of acquisition by Pennsylvania-American Water Company; Aqua Pennsylvania, Inc.; or other proximate service providers or municipalities on rates for Indian Springs' customers and the acquiring utility's existing customers. 66 Pa. C.S. § 529(a)(6).

D. The OCA will examine the reasonableness of any proposed acquisition price for Indian Springs.

E. Alternatively, if Indian Springs' customers are not acquired by PAWC or another proximate provider and Indian Springs petitions to abandon service, the OCA will seek reimbursement from Indian Springs on behalf of Indian Springs customers, in accordance with prior abandonment case law, to help defray the cost to construct a well upon their property.³

VI. SCHEDULE

Currently, the OCA and the parties have agreed to request a temporary stay in the litigation schedule. If it becomes necessary, the OCA will work with the ALJ and the parties to develop a schedule in this proceeding.

³ See Application of Bald Eagle Water Co., 76 Pa. P.U.C. 556, 564 (1992) (approving a Certificate for abandonment of service where water utility committed to pay each customer \$3,500 for the purpose of installing an alternative domestic water supply); See also, Application of Borough of Duncannon, 1996 Pa. PUC LEXIS 124 (1996) (approving a Certificate for abandonment of service conditioned upon contributing \$3,000 each toward new water sources for four (4) customers and \$15,000 toward a new water source for the Perry County Recreation Assoc.); Application of Megargel's Golf, Inc., 1985 Pa. PUC LEXIS 9 (1985) (approving a Certificate for abandonment for service with the condition that the water utility contribute \$6,000 to a customer cooperative if formed, or otherwise \$300 to each property owner, to defray the cost of securing an adequate water supply).

VII. SETTLEMENT

The OCA is willing to participate in settlement discussions in this matter.

VIII. CONSOLIDATION OF COMPLAINTS

For purposes of efficiency and uniformity of outcome, the OCA submits that the complaints filed in response to the notice of this proceeding be consolidated with the proceeding.

In particular, the OCA requests that the Formal Complaint from Thomas V. Tinsley, a customer of Indian Springs, which was assigned docket number C-2019-3012933, be consolidated with the proceeding. If the OCA becomes aware of other complaints, it will notify the ALJ and the parties.

Respectfully Submitted,

/s/Christine Maloni Hoover

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DATE: November 12, 2019
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CERTIFICATE OF SERVICE

Re: Indian Springs Water Company : Docket No. M-2019-3011972

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum, 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 12th day of November 2019.

SERVICE BY E-MAIL and INTER-OFFICE MAIL

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

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