

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

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December 18, 2009

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17105

Re: Pa. Public Utility Commission
v. Birch Acres Water Works
Docket No. R-2009-2110093

Dear Secretary McNulty:

Enclosed for filing please find the Office of Consumer Advocate's revised Statement in Support of the Joint Petition for Settlement in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. #50026

Enclosures

cc: Honorable Ky Van Nguyen
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:		
COMMISSION, et al.	:		
	:		
v.	:	Docket No.	R-2009-2110093
	:	Docket No.	C-2009-2120624
	:		
BIRCH ACRES WATER COMPANY	:		

STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF JOINT PETITION FOR SETTLEMENT

The Office of Consumer Advocate of the Commonwealth of Pennsylvania (OCA), one of the signatory Parties to the Joint Petition for Settlement (Settlement), finds the terms and conditions of the Settlement to be in the public interest for the reasons discussed below. The OCA submits that the Settlement, taken as a whole, is in the public interest and satisfactorily addresses the issues raised in the OCA’s complaint and analysis undertaken in this proceeding. While the Settlement does not reach all the recommendations the OCA may have proposed in its litigation position, the OCA recognizes that settlement is a product of compromise by all the Parties.

I. INTRODUCTION

On July 2, 2009, Birch Acres Water Company (Birch Acres or Company) filed Supplement No. 1 to Tariff Water-PA. P.U.C. No. 10 to become effective September 1, 2009, containing proposed changes in rates designed to produce \$15,804 or 74%. OCA filed a Complaint on July 22, 2009. A formal complaint was filed by a customer at Docket No. C-2009-2133127. OTS entered its notice of appearance. By Order entered August 27, 2009 the Public

Utility Commission (PUC or Commission) suspended the filing until April 1, 2010, and instituted an investigation into the reasonableness of the proposed rates. The case was assigned to Administrative Law Judge Koster and subsequently transferred to ALJ Nguyen.

Birch Acres agreed to participate in the PUC's mediation services and filed a tariff supplement postponing the end of the suspension period until June 1, 2010. A prehearing was held on September 30, 2009 at which time a litigation schedule was set. A mediation session was held on October 26, 2009. A telephonic public input hearing was held on November 4, 2009 at which time two customers testified. As a result of the mediation sessions and discussions, the Parties were able to agree on the Settlement set forth herein. The OCA submits that the proposed Settlement is in the public interest for the reasons discussed below.

II. REVENUES

The proposed Settlement provides for additional annual revenues of \$9,889 or 46.4%. A typical residential customer using 15,000 gallons per quarter would see an increase from \$132 to \$193.40 (46.5%) per quarter, rather than to \$229.68 (74%) as originally proposed by Birch Acres.

Based on the OCAs analysis of the Company's filing, the proposed revenues in the Settlement represent an amount which, in the OCAs view, would be within the range of the likely outcomes in the event of full litigation of the case.

III. STAY-OUT PROVISION

Under the proposed Settlement, Birch Acres cannot file another rate case before January 1, 2011. Thus, the Company's ratepayers will be assured of some level of rate stability.

IV. OTHER PROVISIONS

Leak Detection Surveys: Birch Acres agrees to undertake biannual leak detection surveys, in conjunction with its membership in Pennsylvania Rural Water Association, and

submit a report to the settlement parties and to FUS regarding the results of the survey. The report will identify all unaccounted for water maintenance or repairs done during the time covered by the report.

Efforts to Sell the Company: Birch Acres agrees to provide the status of any negotiations, discussions or offers related to the sale of the company or the transfer of the assets. This information will be provided in the report referenced above. These efforts could result in a proposed sale of the Company which will need to be reviewed by the PUC and other parties, so the settlement provides that the parties have reserved all rights regarding any potential application which may be filed by Birch Acres.

Public Utility Realty Tax (“PURTA”): The rates agreed to in the settlement reflect \$1,300 for PURTA, and Birch Acres has set the PURTA surcharge to zero in the proposed tariff. This provision will allow the Company and the parties to address this issue for the current case and to set the groundwork for addressing this issue in future cases.

Pressure Surveys: Birch Acres has agreed to conduct pressure surveys and maintain a customer complaint log, both as required by PUC regulations. This provision will allow all parties to review the operations of the Company.

Water Testing: Birch Acres has agreed to test Ms. Holmes’ water for total dissolved solids, iron, and manganese and provide the results to the parties and to OTS. The testing should help the parties determine what impact these secondary contaminants might be having on the water provided to Ms. Holmes and its adequacy for all household purposes.

PUC Audit: The Joint Petitioners have asked the Commission to direct the Bureau of Audits to perform a financial audit on Birch Acres. The Joint Petitioners submit that a financial audit of the Company’s records would be a benefit to customers and to the Company.

V. CONCLUSION

The terms and conditions of the proposed Settlement of this rate proceeding represent a fair and reasonable resolution of the issues and claims arising in this proceeding. If approved, the proposed Settlement would produce revenues within a range of anticipated litigation outcomes, and under the Settlement, ratepayers will benefit from the stay-out provision and other provisions. Finally, the Commission and all Parties would benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the Settlement in lieu of full litigation.

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate submits that the proposed Settlement is in the best interests of Birch Acres Water Company's customers.

Respectfully submitted,



Christine Maloni Hoover
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Consumer Advocate

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Dated: December 9, 2009
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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission

v.

Birch Acres Water Works, Inc.

Docket No. R-2009-2110093

C-2009-2120624

I hereby certify that I have this day served a true copy of the foregoing document, Statement in Support, 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 18th day of December 2009.

SERVICE IN PERSON

Adeolu Bakare, Esquire
Charles Daniel Shields, Esquire
Office of Trial Staff
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17105

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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Camp Hill, PA 17105-3265

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