

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 21, 2017

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

Re: Application of Pennsylvania-American Water  
Company under Sections 1102 and 1329 of  
the Public Utility Code for Approval of its  
Acquisition of the Wastewater System Assets  
of The Municipal Authority of the City of  
McKeesport.  
Docket No. A-2017-2606103

Dear Secretary Chiavetta:

Enclosed 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,

/s/ 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 (email only)  
Bureau of Technical Utility Services (email only)  
Certificate of Service

235590

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American :  
Water Company under Sections 1102 and 1329 of :  
the Public Utility Code for Approval of its : Docket No. A-2017-2606103  
Acquisition of the Wastewater System Assets of :  
The Municipal Authority of the City of :  
McKeesport :

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 21st day of June 2017.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Gina Miller, Esquire  
Erika McLain, Esquire  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

John Evans  
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Pennsylvania-American Water Company  
800 West Hershey Park Drive  
Hershey, PA 17033

David P. Zambito, Esquire  
George A. Bibikos, Esquire  
COZEN O'CONNOR  
17 North Second Street, Suite 1410  
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/s/ Christine Maloni Hoover

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Fax: (717) 783-7152  
Dated: June 19, 2017

\*235591

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American :  
Water Company. Pursuant to Sections 1102 :  
and 1329 of the Public Utility Code for :       Docket No. A-2017-2606103  
Approval of its Acquisition of the Wastewater :  
System Assets of The Municipal Authority of :  
the City of McKeesport :

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PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE

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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, Pennsylvania-American Water Company (PAWC or Company) seeks Commission approval for the acquisition of substantially all of the wastewater assets of The Municipal Authority of the City of McKeesport (McKeesport), the right of PAWC to provide wastewater service in McKeesport, the City of Duquesne, the Boroughs of Port Vue and Dravosburg, and a portion of West Mifflin Borough, Allegheny County and to three bulk service interconnection points located in the Boroughs of Liberty, White Oak, and North Versailles, Allegheny County. 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) upon approval of the

application, 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 1-2. PAWC also requests the approval of the Asset Purchase Agreement (APA) with McKeesport as well as numerous other municipal agreements. Application at 2-5. McKeesport provides wastewater service to approximately 12,780 customers in Allegheny County (excluding consumers who are served by an entity through the bulk wastewater service). 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, 5<sup>th</sup> Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are Christine Maloni Hoover and Erin L. Gannon, Senior Assistant Consumer Advocates.

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 Aqua'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. 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 \$162,000,000 per the Asset Purchase Agreement, as First Amended on May 15, 2017. PAWC St. 1 at 11. The original cost of the assets is \$92,830,000 with a related depreciation reserve of \$18,490,000 Appendix A-5, part 7 (HRG Fair Market Valuation at 6).

7. According to PAWC witness Grundusky, the McKeesport Utility Valuation Expert’s (UVE) appraisal was \$207,010,000 (PAWC St. 1 at 11-12.)

while the PAWC UVE's appraisal was \$161,343,000. Appendix A-5, part 1(AUS Fair Market Value Appraisal at 5). The average of the fair market value appraisals is \$184,176,500. PAWC St. 1 at 11-12. The valuation experts were paid \$32,000 plus \$20,667 of additional expenses to date for AUS and estimated total charges of \$48,000 plus expenses for HRG for the Fair Market Value Appraisals. Appendix A-8. PAWC estimates that it will incur transaction and closing costs of \$1.11-1.31 million. PAWC St. 4 at 4; Application, A-12.

8. PAWC proposes to charge customers the current McKeesport rates in effect at closing. PAWC St. 1 at 12. The Asset Purchase Agreement between PAWC and McKeesport provides that those rates would not change until after the first anniversary of the closing date. Id.

9. 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.

10. 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 7-8, footnote 4. The OCA will examine the proposal to determine whether it is a rate stabilization plan and whether it is adequately supported and reasonable or alternately whether the rate commitments are reasonable.

11. PAWC would charge the following rates:

	Monthly Charge (5/8" meter) <sup>1</sup>	
	<u>0-2000gallons</u>	<u>Each additional 1000 gallons</u>
McKeesport	\$30.70	\$12.75
Dravosburg	\$30.70	\$12.75
Duquesne	\$30.70	\$12.75
	Monthly Charge <sup>2</sup>	
	<u>0-3000 gallons</u>	<u>Each Additional 1000 gallons</u>
Versailles	\$33.31	\$8.76
	Quarterly Charge	
	<u>0-4000 gallons</u>	<u>Each Additional 1000 gallons</u>
Port Vue	\$58.05/Q	\$9.95
Sewage processing rate for Bulk connections		\$8.40/1000 gallons <sup>3</sup>

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

12. 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 McKeesport, Duquesne, Dravosburg, and Port Vue systems will be \$62,730,000. PAWC St. 3 at 14; 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.

13. The OCA submits that additional information is necessary to determine if the proposed rates, rate freeze, and PAWC's request for an approved rate base of \$162 million for the McKeesport acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further

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<sup>1</sup>The charges shown are contained in the proposed tariff (Appendix A-13) and are higher than the current McKeesport charges attached to the Asset Purchase Agreement, Sch. 7.05(a).

<sup>2</sup> These rates are shown on Schedule 7.05(a) of the Asset Purchase Agreement but are not reflected in the proposed tariff.

<sup>3</sup> The charge shown here is contained in the proposed tariff (Appendix A-13) and is higher than the current McKeesport charge attached to the Asset Purchase Agreement, Sch. 7.05(a).



information is obtained from the Applicant.

14. The OCA submits 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,



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Counsel for:

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Acting Consumer Advocate

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(717) 783-5048

Dated: June 21, 2017  
235909

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 Municipal Authority of the City of McKeesport (McKeesport) 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 McKeesport 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 investigate the proposed acquisition 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 55,000 wastewater customers in Pennsylvania. McKeesport serves approximately 12,780 customers in the City of McKeesport, the City of Duquesne, the Boroughs of Port Vue and Dravosburg, and a portion of West Mifflin Borough, Allegheny County and to three bulk service interconnection points located in the Boroughs of Liberty, White Oak, and North Versailles, Allegheny County.