

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 10, 2018

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

Re: Application of SUEZ Water Pennsylvania Inc. for the Acquisition of the Township of Mahoning Wastewater System Pursuant to Sections 1102 and 1329 of the Public Utility Code.
Docket No. A-2018-3003517

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.

Very truly yours,

/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
*256148

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of SUEZ Water Pennsylvania Inc. :
for the Acquisition of the Township of :
Mahoning Wastewater System Pursuant to : Docket No. A-2018-3003517
Sections 1102 and 1329 of the Public Utility :
Code :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

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, SUEZ Water Pennsylvania, Inc. (SWPA or Company) seeks Commission approval for the acquisition of the transfer, by sale, of substantially all of the Township of Mahoning's (Mahoning or Township) assets, properties and rights related to its wastewater collection and conveyance system (the Wastewater System) to SWPA, the right of SWPA to begin to offer, render, finish and supply wastewater collection and conveyance service to the public in portions of the Townships of Mahoning, Cooper and Valley, Montour County, Pennsylvania, to use for ratemaking purposes the lesser of the fair market value or the negotiated purchase price of Mahoning's assets related to the Wastewater System, and the accrual of Allowance for Funds Used During Construction (AFUDC) for post-acquisition improvements not recovered through a DSIC for book and ratemaking purposes. Mahoning Township provides

wastewater collection and conveyance service to approximately 1,620 customers in Mahoning, Cooper, and Valley Townships, Montour County. Application at 5. SWPA also seeks approvals under Section 507 of the Public Utility Code related to the Asset Purchase Agreement, a Connection and Conveyance Agreement between Mahoning and Cooper Township Municipal Authority, Mahoning and Danville and other existing Mahoning agreements. See Application at 3-4.

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, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorney for the purpose of receiving service of all documents in this proceeding is Christine Maloni Hoover, Senior Assistant Consumer Advocate.

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 SWPA's existing and to-be-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. SWPA proposes to pay \$9,500,000 for the water and wastewater assets, of which \$4,765,200 has been allocated to the water system. SWPA St. 1 at 11. The original cost of the wastewater assets is \$4,931,649 with a related depreciation reserve of \$1,696,790. Application at Appendix A-5-a.

7. According to the Application, the average of the fair market value

appraisals is \$11,109,110, with the wastewater system valued at \$5,572,770.¹ Exh. A-14-a, SWPA St. 1 at 11-12. The allocated purchase price for the wastewater system is \$4,765,200. Appendix A-14, SWPA St. 2 at 4-5.

8. The valuation experts were paid \$59,145 for the Fair Market Value Appraisal Reports for both the water and wastewater systems. Exh. A-8-a. SWPA also indicates that it will incur transaction and closing costs of approximately \$1,000,000 between the Water System and the Wastewater System, which will be included in rate base. Appendix A-14, SWPA St.1 at 5-6; Appendix A-12.

9. SWPA proposes to charge customers of the Mahoning Township system the Mahoning Township wastewater rates in effect at closing. Application at 6, 11; Appendix A-13. Those rates will remain in effect until SWPA's next base rate case but SWPA may impose any fee or surcharge permitted by its Commission-approved tariff. Id.

10. 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:

- a. The valuation information provided with the Application is not sufficient to determine whether SWPA ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation.
- b. Based on the Township's current rates, SWPA would charge a monthly flat rate of \$36.80 to residential customers. Appendix

¹ Gannett Fleming valued the Wastewater System at \$5,414,200 and ScottMadden valued the Wastewater System at \$5,731,341. Id.

A-13 a.² Commercial and industrial customers have a minimum quarterly rate that includes 1,000 gallons per quarter and a volumetric rate. Id. Commercial and industrial customers would be charged the higher of the Flat rate, the Consumption rate or the EDU rate. Id. SWPA estimates annual wastewater revenues of \$1,400,000 from Mahoning, Cooper, and Valley Townships, Montour County. Appendix 19-d.

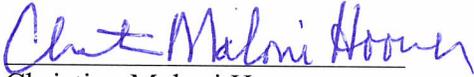
11. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit SWPA's existing customers.

12. The OCA submits that additional information is necessary to determine if the proposed rates, and SWPA's request for an approved rate base of \$4,765,200 for the Mahoning Township wastewater acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

² The Township currently charges residential customers a flat rate of \$110.40 per quarter. SUEZ will convert this amount to monthly billing. $\$110.40 / 3 \text{ months} = \36.80 per month. Application at 11-12; Appendix A-18-a; Appendix A-13-a.

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,



Christine Maloni Hoover
Senior Assistant Consumer Advocate
Pa. Attorney No. 50026
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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

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

Dated: August 10, 2018
255729

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 SUEZ Water Pennsylvania of the Mahoning Township (Mahoning or Township) sanitary wastewater assets.

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of SWPA's current customers and the Township 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.

SWPA serves approximately 11 wastewater customers and 60,396 water customers in Pennsylvania. The Township serves approximately 1,620 wastewater customers in portions of Mahoning Township, in Cooper Township, and Valley Township Montour County, Pennsylvania.

CERTIFICATE OF SERVICE

Application of SUEZ Water Pennsylvania Inc :
for the Acquisition of the Township of Mahoning : Docket No. A-2018-3003517
Wastewater System Pursuant to Sections 1102 and 1329 :
of the Public Utility Code :

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 10th day of August 2018.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Scott Granger, Esquire
Carrie Wright, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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