

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

November 29, 2018

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

v.

Docket No. P-2018-3006216
Docket No. C-2018-2644592

Winola Water Company

EX PARTE EMERGENCY ORDER

On November 28, 2018, the Commission's Bureau of Investigation and Enforcement (BIE) filed the above-captioned Petition for an Ex Parte Emergency Order regarding the Winola Water Company (WWC), Utility Code 210106 (BIE Petition). WWC provides water service to approximately ten (10) year-round customers and approximately twenty-five (25) seasonal customers around Lake Winola in Overfield Township, Wyoming County, Pennsylvania. On October 5, 2018, the Pennsylvania Department of Environmental Protection (DEP) directed WWC to issue to its customers a public notification advising that water produced by WWC is not safe for consumption. BIE Petition at 3, ¶ 8. BIE avers that, to date, WWC has taken no action to correct conditions underlying its provision of non-potable water to its customers. BIE Petition at 3, ¶ 11.

BIE attached DEP Field Orders in support of its allegations. There, BIE points out that DEP ordered WWC to provide its customers with an alternative source of potable water. BIE Petition Ex. A at 3. The BIE Petition contains a verified statement that WWC has not provided an alternative source of water to its customers as of the date of the Petition. BIE Petition at 9, ¶ 31. BIE also alleges that it believes that WWC does not intend to

provide an alternative source of drinking water to its customers. Finally, in addition to the matters alleged in its Emergency Petition, BIE also points out that its January 26, 2018 Formal Complaint against WWC at Docket No. C-2018-2644592 alleges that WWC facilities need significant repair and maintenance which BIE believes WWC has no intention to address. BIE Petition at 9, ¶ 33.

The Commission will grant the Petition, as modified herein, to ensure continued water service to WWC customers. The Commission takes immediate affirmative action here, subject to revision in a subsequent Ratification Order, to protect WWC customers and all members of the public affected by the regulated utility service rendered by WWC, and to confirm the WWC obligation to provide safe, reasonable, reliable, and adequate utility service. Based on its apparent lack of safe, reasonably continuous, and adequate service, present management and operating conditions at WWC appear to present a serious public health and safety threat that the Commission will not ignore.¹ BIE Petition, *passim*. As such, the Commission finds that BIE has met the standards for issuance of an Ex Parte Emergency Order.

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa. C.S. § 501. The Commission is also authorized to “enforce obedience” to the Public Utility Code, Commission regulations, and orders. 66 Pa. C.S. § 502. Pursuant to that authority, the Commission has issued regulations governing emergency situations, specifically when it will issue *ex parte* emergency orders to address clear and present dangers to life or property. 52 Pa. Code § 3.1. As a part of the due

¹ The Commission notes that the Wyoming County Court of Common Pleas recently addressed violations by WWC in approving a settlement between WWC and DEP and granting DEP enforcement power for the same. *See Commonwealth, Dep't. of Environmental Protection v. Ralph Scartelli and Winola Water Co.*, Docket No. 2018-819 (Aug. 24, 2018). The Court directed WWC to undertake monitoring for certain substances and develop plans for monitoring and other plans in accordance with DEP regulations. The Commission notes that this Order provides further support for the averments in BIE's Petition.

process provided to persons subject to an *ex parte* emergency order, 52 Pa. Code § 3.4, provides access to an expedited hearing within 10 days.

As to requested relief, BIE asks that the Commission act pursuant to 66 Pa. C.S. § 529, *power of commission to order acquisition of small water and sewer utilities*. BIE asks the following under this provision of the Public Utility Code.

- 1) A proceeding under 66 Pa.C.S. § 529 be initiated;
- 2) that a competent water utility be appointed as receiver for Winola's system under 66 Pa.C.S. § 529(g);
- 3) that the utility appointed receiver under 66 Pa.C.S. § 529(g) shall provide an alternative source of potable water within twenty-four (24) hours of the entry of an emergency order; and,
- 4) any other such relief that the Commission deems appropriate.

BIE Petition at 12. The Commission agrees that 66 Pa. C.S. § 529 authorizes the Commission to direct a competent public utility to assume operational control or to acquire a small water utility that has jeopardized public safety by failing to provide reasonable and adequate utility service.

Section 529 of Title 66 is an emergency provision in which the Public Utility Code authorizes the Commission to take immediate action to protect the public interest. Pursuant to 66 Pa. C.S. § 529, the Commission may order a capable public utility to acquire a small water utility like WWC if the Commission determines, after notice and hearing, that (1) WWC has violated statutory or regulatory standards, (2) WWC has failed to comply within a reasonable period of time with any Commission order concerning the safety, adequacy, efficiency, or reasonableness of service, (3) WWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future, (4) alternatives to acquisition are determined to be impractical or not economically feasible, (5) the acquiring utility is capable of operating WWC in compliance with statutory and regulatory standards, and (6) that the rates charged to WWC customers will not increase

unreasonably because of the acquisition. 66 Pa. C.S. § 529(a). In making these determinations, the Commission is to consider the factors enumerated in 66 Pa. C.S. § 529(c).

Regarding 66 Pa. C.S. § 529(a)(4), that Section requires the Commission to explore alternatives to acquisition as outlined in 66 Pa. C.S. § 529(b). Finally, as the bureau with delegated prosecutory discretion under Section 308.2(a)(11) of the Public Utility Code, the BIE shall be directed to participate in this matter to address fitness determinations, alternatives to acquisition, and factors for consideration required under Sections 529(a), (b), and (c) as it deems appropriate and before a final determination on acquisition can be rendered.

In addition to the above, 66 Pa. C.S. § 529(g) provides that the Commission may take action to ensure that customers of a small water utility and the affected public will receive safe and adequate service during the pendency of a Section 529 proceeding. Section 529 provides as follows:

(g) Appointment of receiver.—The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

66 Pa. C.S. § 529(g). While the BIE Petition discusses that Pennsylvania's two largest regulated water utilities, Pennsylvania American Water Company (PAWC) and Aqua Pennsylvania (Aqua), would be suitable candidates to operate WWC, it does not explicitly request one or the other to function a receiver for WCC. BIE Petition at 10, ¶¶ 36-39. However, BIE points out that it believes that PAWC previously provided aid to WWC customers in the form of bottled water in October 2018. BIE also notes that the PAWC certificated service area includes the nearby Borough of Clarks Summit, which is a part of the PAWC Abington District in Lackawanna County. Further, the Commission understands that PAWC operates a distribution center serving approximately 6,500 customers out of the Abington District. All the above indicate that PAWC can serve as a receiver for WWC.

This Order will appoint PAWC as the Receiver to manage and operate WWC during the pendency of the Section 529 proceeding ordered herein. The Commission appoints PAWC as the Receiver because of its expertise and experience in operating water utilities subject to regulation under the Public Utility Code, and because its familiarity and understanding of the circumstances will work to ensure safe, adequate, reliable, and reasonably continuous service to the public. Accordingly, the Commission has specified the duties and responsibilities of the Receiver in this Order and in Appendix A.

CONCLUSION

To protect the health, safety and welfare of the customers of the Winola Water Company, the Commission will initiate a proceeding pursuant to 66 Pa. C.S. § 529, including the appointment of a receiver under Section 529(g). These actions will provide for the orderly transition of operation and perhaps ownership of the WWC to a competent water provider and will protect the customers of WWC and the affected public;

THEREFORE,

IT IS ORDERED:

1. That an investigation shall be instituted into whether the Commission should order a capable public utility to acquire Winola Water Company pursuant to 66 Pa. C.S. § 529 and as is consistent with this Order.
2. That the Bureau of Investigation and Enforcement is expected to participate in the investigation proceeding. Water utilities with an interest in this matter may petition to participate as appropriate.
3. That Winola Water Company shall provide notice to its customers of the imposition of the receivership and the initiation of a Section 529 proceeding in the same

manner as a general rate increase and shall inform its customers to direct future payments for wastewater service to the Receiver as appointed by the Commission.

4. That pursuant to 66 Pa. C.S. § 529(g), the Commission directs Pennsylvania American Water Company to act as the Receiver for the Winola Water Company beginning Monday, December 10, 2018 and to continue during the pendency of the Section 529 proceeding ordered below and in accordance with Appendix A to this Order.

5. Pennsylvania American Water Company will continue to provide bottled water to the Winola Water Company customers as required in the interim between this Ex Parte Order and December 10, 2018.

6. The Receiver shall not assume any debt incurred by the Winola Water Company unless such assumption is approved through an Order of this Commission.

7. The Receiver shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by the Winola Water Company.

8. That utilities serving the Winola Water Company are permitted and directed to initiate service to the facilities used to serve the Winola Water Company customers in the name of the Receiver as appointed by the Commission and consistent with this Order.

9. That the Winola Water Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of utility water service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies or be subject to criminal

and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

10. That the Winola Water Company shall, no later than December 10, 2018 turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility wastewater service to customers served by the Winola Water Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

11. That the Winola Water Company shall, no later than December 10, 2018, turn over all operations and assets, including keys to locks securing the Big Oaks Well Treatment Building, the Reservoir Hatch, and the Middle Oaks Well Treatment building, and any other property, whether personal or real property, used and useful in the provision of utility wastewater service to customers served by the Winola Water Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

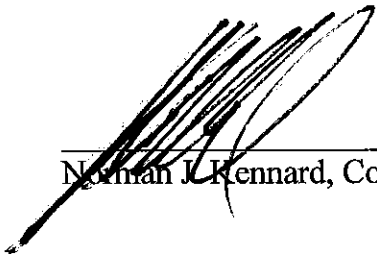
12. That the Winola Water Company, including its owners and employees, are directed to provide full and unconditional cooperation with the orderly transition of operations, management, and oversight to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

13. That the Winola Water Company shall cease all billing and collections activity to its former customers as of December 10, 2018.

14. Effective immediately, the Winola Water Company shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under contract, whether oral or written, or under any arrangement or agreement with an affiliated interest, the terms of which have not been approved by the Commission, subject to criminal and/or civil prosecution under Chapters 19, 21, and 33 of the Public Utility Code and any other applicable state or federal law.

15. That a copy of this Order be served on the Winola Water Company, Aqua Pennsylvania Wastewater, Pennsylvania American Wastewater Company, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Department of Environmental Protection, all proximate municipalities and authorities providing water service in an around Lake Winola, Overfield Township, Wyoming County, Pennsylvania.

16. That a copy of this Order be posted on the Commission's website at www.puc.pa.gov.



Norman J. Kennard, Commissioner

DATE: November 29, 2018

APPENDIX A
Docket No. P-2018-3006216

1. That the Receiver, in its capacity as receiver of the Winola Water Company (WWC), shall have the following duties and responsibilities:
 - a. Operate the system in compliance with all State, Federal, and local laws and regulations.
 - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
 - c. Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
 - d. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
 - e. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
 - f. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.
 - g. Provide for normal routine maintenance and the provision of supplies for the system.
 - h. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
 - i. Assume WWC's billing and collection functions.
 - j. Provide WWC's customer service.

- k. Have the authority to borrow money in the name of WWC necessary for the continued provision of adequate, efficient, safe and reasonable service to the customers of WWC.
- l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of WWC.
- m. Comply with WWC's effective tariff for WWC customers.
- n. Submit all necessary paperwork to regulatory agencies of the system on behalf of WWC.
- o. Submit an initial status report to the Commission within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
- p. Participate in discussions with the Commission regarding alternatives to the acquisition of WWC, pursuant to 66 Pa. C.S. § 529(b).
- q. Submit testimony regarding each factor delineated under 66 Pa. C.S. § 529(c) in any future proceeding pursuant to 66 Pa. C.S. § 529(a) relating to the acquisition of WWC by a capable public utility.
- r. Make reasonable efforts to establish the financial position of WWC at the time the Receiver assumed receivership.
- s. Establish a deferred expense account for expenses incurred by WWC that are payable to the Receiver.
- t. Petition the Commission to add or remove any duties or responsibilities; however, the Receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission Order or by a court with competent jurisdiction.
- u. Be permitted to use existing Commission-approved affiliated entities to provide services to WWC, provided that the Receiver provides the Commission written notice identifying which affiliates are providing services for which approval under 66 Pa. C.S. § 2102 would typically be required.

- v. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
 - w. Charge WWC reasonable rates for all services rendered to or for WWC on behalf of the receivership.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should WWC be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of WWC, the receiver, at its option, may either directly provide financing for WWC or file a petition for bankruptcy.
 - b. Establish a deferred expense account for expenses incurred by the receiver resulting from this order, including prudent and reasonable legal expenses.
3. The Receiver may petition the Commission for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of WWC.