

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 21, 2018

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

Re: Pa. Public Utility Commission, Bureau of  
Investigation and Enforcement  
v.  
Winola Water Company  
Docket Nos. C-2018-2644592  
P-2018-3006216

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 per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby  
Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [CAappleby@paoca.org](mailto:CAappleby@paoca.org)

Enclosures:

cc: Honorable Joel H. Cheskis  
Certificate of Service  
\*264302

CERTIFICATE OF SERVICE

Re: Pa. Public Utility Commission, :  
Bureau of Investigation and : Docket Nos. C-2018-2644592  
Enforcement : P-2018-3006216  
v. :  
Winola Water Company :

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 21<sup>st</sup> day of December 2018.

SERVICE BY E-MAIL and INTER-OFFICE MAIL

Michael L. Swindler, Esquire  
Bradley R. Gorter, Esquire  
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SERVICE BY E-MAIL and FIRST CLASS MAIL, POSTAGE PREPAID

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Thomas T. Niesen, Esquire  
Thomas, Niesen, & Thomas, LLC  
212 Locust Street  
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Elizabeth Rose Triscari, Esquire  
Pennsylvania American Water Company  
800 West Hershey Park Drive  
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Overfield Township  
775 Lower Mill City Road  
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Suez Water Pennsylvania Inc.  
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Fax: (717) 783-7152  
Dated: December 21, 2018  
\*264304

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	Docket Nos. P-2018-3006216
	:	C-2018-2644592
	:	I-2018-3006498
v.	:	
	:	
Winola Water Company	:	

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PREHEARING CONFERENCE MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the December 17, 2018 Prehearing Conference Order, the Office of Consumer Advocate (OCA) provides the following:

**I. BACKGROUND**

Winola Water Company (Winola, WWC, or Company) serves approximately ten (10) year-round customers and twenty-five (25) seasonal customers in the area of Lake Winola, Wyoming County, Pennsylvania. On January 26, 2018, the Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint against Winola at Docket No. C-2018-2644592. The Formal Complaint identified multiple violations of Field Orders issued by the Department of Environmental Protection (DEP) from the period of December 2016 through January 2018 and Winola's subsequent failure to provide safe, adequate and reasonable service to customers under Section 1501 of the Public Utility Code. See 66 Pa. C.S. § 1501. The Formal Complaint requested that the Company be assessed a civil penalty of \$15,000, be required to perform all necessary repairs and maintenance, and that the Company's certificate of public convenience be cancelled.

On November 28, 2018, I&E filed a Petition for the Issuance of an *Ex Parte* Emergency Order at Docket No. P-2018-3006216 in response to the Do Not Consume Field Order issued by DEP on October 5, 2018. The Petition cited to the Field Order's statements that the cadmium and lead levels in the water exceeded the maximum allowable levels for drinking water in the DEP regulations at 25 Pa. Code § 109.202(a)(adopting by reference 40 CFR §§ 141.62, 141.80(c)(1)). The Petition also alleged that Winola failed to provide an alternative source of potable water to customers. The Petition requested that: (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 appointed receiver shall provide an alternative source of potable water within 24 hours of the entry of an emergency order; and (4) any other such relief that the Public Utility Commission (Commission) deems appropriate.

On November 29, 2018, Commissioner Norman J. Kennard issued an *Ex Parte* Emergency Order that granted the I&E Petition. See, 52 Pa. Code §§ 3.2-3.4. The *Ex Parte* Order ordered an investigation into whether the Commission should order a capable public utility to acquire Winola pursuant to Section 529 of the Public Utility Code. See, 66 Pa. C.S. § 529. The Order also appointed Pennsylvania American Water Company (PAWC) receiver for Winola beginning on December 10, 2018 and to continue to act as receiver during the pendency of the Section 529 proceeding.

On November 29, 2018, the OCA filed its Notice of Intervention. The OCA intervened in this proceeding to protect the interests of Winola's and PAWC's customers and to ensure that a resolution was found that was in accordance with applicable statutes.

At the December 6, 2018 Public Meeting, the Commission issued a Ratification Order that concluded it is in the public interest to ratify the November 29, 2018 Order. The Section 529 investigation has been docketed at Docket No. I-2018-3006498.

As stated in the December 17, 2018 Prehearing Conference Order, an informal off-the-record conference call was held on December 7, 2018. The parties confirmed that PAWC was prepared to meet the obligations identified in the November 29<sup>th</sup> Order and that the owner of Winola, Mr. Scartelli, did not oppose the emergency petition. December 17, 2018 Prehearing Conference Order at 2. Therefore, no expedited emergency hearing was needed or held. December 17, 2018 Prehearing Conference Order at 2.

A further informal off-the-record conference call was held on December 14, 2018.<sup>1</sup> On the December 14 call, the parties confirmed the notice to Winola customers and surrounding water companies; confirmed availability for a January 7 Prehearing Conference and the January 7 date for Petitions to Intervene; and discussed other procedural issues related to the proceeding. December 17 Prehearing Conference Order at 3.

On December 17, 2018, a Hearing Notice was issued establishing an initial Prehearing Conference on January 7, 2019. On December 17, 2018, a Prehearing Conference Order was issued and requested that Prehearing Memorandum be filed by the parties on or about December 31, 2018.

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

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<sup>1</sup> Mr. Scartelli did not participate in the call. December 17 Prehearing Conference Order at 3.

## **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 Christy M. Appleby. Two copies of all documents should be served on the OCA as follows:

Christine Maloni Hoover  
Erin L. Gannon  
Senior Assistant Consumer Advocates  
Christy M. Appleby  
Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
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[cappleby@paoca.org](mailto:cappleby@paoca.org)

## **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 Ashley E. Everette, Regulatory Analyst with the Office of Consumer Advocate and Terry L. Fought, P.E. Their contact information is as follows:

Ashley E. Everette, Regulatory Analyst  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, Pa. 17101-1923  
Telephone: (717) 783-5048  
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E-mail: [aeverette@paoca.org](mailto:aeverette@paoca.org)

Terry L. Fought, P.E., Consulting Engineer  
780 Cardinal Drive  
Harrisburg, PA 17111  
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E-mail: [TLFEngr@aol.com](mailto:TLFEngr@aol.com)

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

## **V. ISSUES, EVIDENCE AND PROPOSED SCHEDULE**

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 WWC's 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 WWC 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 WWC's 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 WWC.

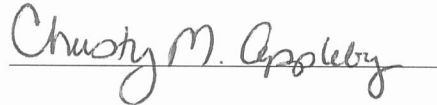
## **VI. SCHEDULE**

The OCA will work with the ALJ and the parties to develop a schedule in this proceeding.

## VII. SETTLEMENT

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

Respectfully Submitted,



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DATE: December 21, 2018  
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