



COMMONWEALTH OF PENNSYLVANIA

February 19, 2019

E-FILED

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

Re: Application of The York Water Company - Wastewater for approval of the acquisition of the wastewater system assets owned by the Jacobus Borough Sewer Authority / Docket No. A-2019-3007355

Dear Secretary Chiavetta:

Enclosed please find the Notice of Intervention & Protest, Public Statement, and Verification, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Steven C. Gray".

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN THE MATTER OF THE APPLICATION OF :
THE YORK WATER COMPANY, Under :
Sections 507, 1102(a)(1) and 1102(a)(3) of the : **Docket No. A-2019-3007355**
Public Utility Code, for approval of the right of :
THE YORK WATER COMPANY to (1) enter :
into a municipal contract to acquire certain :
public wastewater facilities from Jacobus :
Borough Sewer Authority; (2) assume a :
municipal contract currently in effect between :
Jacobus Borough Sewer Authority and :
Springfield Township, York County, Sewer :
Authority; and (3) begin to offer or furnish :
wastewater service to the public in the Borough :
of Jacobus, York County, Pennsylvania :

**NOTICE OF INTERVENTION AND PROTEST
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention and Protest with respect to the above-captioned Application (“*Application*”) pursuant to Sections 5.51(a) and 5.71(a)(1) of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §§ 5.51(a) and 5.71(a)(1). In support of this Notice of Intervention and Protest, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interests of small business consumers as a party in proceedings before the Commission.

2. Representing the OSBA in this proceeding is:

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
sgray@pa.gov

3. The *Application* was filed by The York Water Company (“York Water” or “Company”), on January 16, 2019. Notice of the *Application* was published in the February 2, 2019 issue of the Pennsylvania Bulletin, which directed that formal protests and petitions to intervene were to be filed on or before February 19, 2019. The OSBA files this protest pursuant to the directives of the notice in the Pennsylvania Bulletin.

4. York Water is a Commission-certificated operating public water and wastewater utility that provides service to various classes of customers in designated service territories within Pennsylvania. Currently York Water provides water service in 48 municipalities and wastewater service in 3 municipalities. *See Joint Application*, at Paragraphs 3 and 4.

5. Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. § 1102(a)(3).

6. When a certificate of public convenience is required under Section 1102, Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), allows the Commission to issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed acquisition would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

8. The *Application* raises a number of issues that may require the Commission to reject the *Application*, or to approve it only after imposing strict conditions.


9. The *Application* proposes a rate freeze for current customers of the Jacobus Borough Sewer Authority “for a period of three (3) years from the execution date of this Agreement or until adjusted from time to time by the Commission, whichever is later.” *Application*, Exhibit I at 7. While rate freezes have the potential to shift revenue responsibility to other ratepayers of the utility, it is unclear from the *Application* how other York Water ratepayers would be impacted by the proposed rate freeze.

10. The OSBA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicants.

WHEREFORE, the OSBA respectfully requests that the Commission reject the *Application* as filed.

In the alternative, the OSBA respectfully requests that the Commission conduct a full investigation, including evidentiary hearings, into the *Application*.

Respectfully submitted,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Date: February 19, 2019

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Springfield Township, York County, Sewer :
Authority; and (3) begin to offer or furnish :
wastewater service to the public in the Borough :
of Jacobus, York County, Pennsylvania :

**PUBLIC STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (“Act”). The Act further provides that the Small Business Advocate is to issue publicly a written statement stating concisely the specific interest of small business consumers to be protected by his initiation of or intervention in any proceeding involving those interests before the Public Utility Commission (“Commission”) or any other agency or court. This public statement relates to the filing today by the Small Business Advocate of a protest against the proposed January 16, 2019, application of The York Water Company (“York Water” or the “Company”) to acquire the wastewater facilities from The Jacobus Borough Sewer Authority.

The Small Business Advocate files this formal complaint against the Company's proposed acquisition in order to protect the interests of the Company's small business customers. A thorough inquiry by the Commission into all of the elements of the Company's proposed acquisition is necessary to ensure that the proposed rate increases are lawful, just, reasonable, and not unduly discriminatory.

In view of the foregoing, the Small Business Advocate will participate in proceedings before the Commission to investigate the reasonableness of the proposed rate increases. The Small Business Advocate will ask the Commission to deny any proposed new rates and other tariff changes that apply to small business customers that are not proven by York Water to be lawful, just, reasonable, and not unduly discriminatory to the Company's small business customers.

Dated: February 19, 2019

VERIFICATION

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: February 19, 2019



(Signature)

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of Jacobus, York County, Pennsylvania :**

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).


The Honorable Charles E. Rainey Jr.
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
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Harrisburg, PA 17120
crainey@pa.gov
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(Counsel for York Water)

DATE: February 19, 2019



Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538