

COMMONWEALTH OF PENNSYLVANIA



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April 29, 2019

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
I-2018-3006498

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Petition of Pennsylvania-American Water Company, in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Christy M. Appleby".

Christy M. Appleby
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Enclosures:

cc: Honorable Joel H. Cheskis
Certificate of Service
*271223

CERTIFICATE OF SERVICE

Re: Pa. Public Utility Commission, :
Bureau of Investigation and : Docket Nos. C-2018-2644592
Enforcement : P-2018-3006216
v. : I-2018-3006498
: :
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 Answer to the Petition of Pennsylvania-American Water Company, 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 29th day of April 2019.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO THE PETITION OF
PENNSYLVANIA-AMERICAN WATER COMPANY

Pursuant to 52 Pa. Code Section 5.61, the Office of Consumer Advocate (OCA) hereby submits this Answer to the Petition filed by Pennsylvania-American Water Company (PAWC or Company) for Amendment and Deferred Accounting Treatment in the above-captioned proceeding. As set forth below, the OCA does not agree that the Commission’s Ex Parte Order in the above-referenced dockets needs to be amended. The OCA does not oppose the request to create a regulatory asset, but PAWC should be required to account for any credits to the regulatory asset received. PAWC should also be denied its requested extension of Section 1329-like treatment to post-acquisition costs.

I. INTRODUCTION

On April 19, 2019, PAWC filed a Petition with the Pennsylvania Public Utility Commission (Commission) to request that the Commission clarify on an expedited basis the Commission’s Ex Parte Emergency Order that appointed PAWC receiver for the Winola Water Company (WWC). Petition at 1. PAWC requests that the Commission:

amend Appendix A to the Ex Parte Emergency Order to clarify PAWC's duties and responsibilities as receiver, to address the repayment of any expenses incurred by PAWC in its capacity as receiver, and to address the accounting and rate-making treatment to be given to any expenses incurred by PAWC in its capacity as receiver that are not repaid by or on behalf of WWC.

Petition at ¶ 9.

On November 28, 2018, the Commission's Bureau of Investigation and Enforcement (BI&E) filed a Petition for an Ex Parte Emergency Order regarding WWC in response to the Pennsylvania Department of Environmental Protection's October 5, 2018 Do Not Consume Order. At the time of BI&E's Petition, WWC had not taken any actions to provide potable water to its customers or to correct the issues that resulted in the DEP issuance of a Do Not Consume Order.

Pursuant to its authority under Section 529 of the Public Utility Code, the Commission ordered PAWC to take over operations of WWC in order to address the non-potable water provided to WWC's 10 permanent customers and 25 seasonal customers. Ex Parte Emergency Order at 3-5, Ordering ¶ 4; see also, 66 Pa. C.S. § 529. Appendix A to the Emergency Ex Parte Order details the duties responsibilities of PAWC as receiver and states in relevant parts:

1. That the Receiver, in its capacity of the Winola Water Company, 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...
- 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...
- 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...
- w. Charge WWC reasonable rates for all services rendered to or for WWC on behalf of the receivership.

Ex Parte Emergency Order, Appendix A at 1-3; see also, portions of Appendix A cited in Petition at ¶ 6.¹

PAWC's Petition requests amendment of the Ex Parte Order in three respects: (1) authority to make capital improvements to address immediate, short-term and long-term issues (Petition at

¹ The Ex Parte Emergency Order was ratified in the Commission's December 6, 2018 Ratification Order.

¶¶ 13-16); (2) authority to bill customers (Petition at ¶¶ 17-24); and (3) authority to seek recovery in rates of all amounts it incurred on behalf of WWC during the receivership, including capital expenditures, through a deferred account and the creation of a regulatory asset (Petition at ¶¶ 24-33). The OCA submits that with respect to the first two requested amendments, no amendment of the Ex Parte Order is needed because the Commission already granted such responsibility and authority in the Ex Parte Order.

In its Petition, PAWC states that “the Ex Parte Emergency Order currently does not provide PAWC with clear authority to undertake improvements...necessary for PAWC to discharge the duties and responsibilities that Appendix A explicitly imposes...” Petition at ¶ 15. PAWC requests that the Commission clarify that the Commission’s intent is that “PAWC should be authorized to undertake the capital improvements necessary for DEP to lift the Do Not Consumer Order.” Petition at ¶ 15. The Ex Parte Order is clear and does not require amendment. The Ex Parte Order orders PAWC, as receiver, to “operate the system in compliance with all State, Federal, and local laws and regulations.” Ex Parte Order at Appendix A, ¶ 1(a). Operation of the system in compliance with the law requires that PAWC make all improvements necessary to lift the Do Not Consume Order and to provide for the continued provision of potable water to WWC consumers in the future. Ex Parte Order at Appendix A, ¶¶ (1)(a), (b), (c), (d), (e), (g); Petition at ¶¶ 13-16. The Ex Parte Order broadly provides PAWC the authority to take such actions as to borrow money in WWC’s name, to declare bankruptcy, and to file for any necessary permits in order to achieve this objective. The OCA submits that further amendment is not necessary and should not be granted.

PAWC also requests amendment of the Commission’s Order to allow the Company to begin billing customers for services rendered on and after January 1, 2019. Petition at ¶¶ 17-23.

PAWC states that “the amounts collected from WWC’s customers will be placed in a separate account.” Petition at ¶ 23. PAWC identifies that due to the poor billing documentation for WWC and the Do Not Consume Order, PAWC has not yet begun to bill WWC customers. Petition at ¶ 20. PAWC states that it is “concerned about the possibility that a customer of WWCC may file a complaint against PAWC for billing customers of WWC.” Petition at ¶ 21. The OCA submits that the Commission’s Appendix A to its Order specifically authorizes PAWC to “assume billing and collection functions;” “to provide WWC’s customer service;” and “to comply with WWC’s effective tariff.” If a customer files a complaint against WWC, PAWC can reference its already identified authority to operate WWC as receiver and to assume all billing functions. Amendment of the Ex Parte Order is not necessary because PAWC’s authorization to operate in WWC’s stead is explicit. The OCA submits that PAWC’s request for amendment regarding the billing of customers is unnecessary and should be denied.

Finally, PAWC requests to be made whole for all prudent and just and reasonable costs it incurs as receiver. Petition at ¶ 29. PAWC specifically requests deferred accounting treatment and the creation of a regulatory asset. Petition at ¶¶ 31-32. The OCA agrees that PAWC should be permitted to seek recovery for its prudent and reasonable costs incurred as receiver for PAWC, and, in this case, PAWC should be permitted to create a regulatory asset for its costs incurred during its receivership and, if it purchases the system, costs related to closing. The OCA, however, does not agree with PAWC’s proposed methodology for its cost recovery as discussed below.

II. ANSWER

In its Petition, PAWC states that it is “concerned that despite its right to be made whole for the reasonable and prudent costs it incurs in its capacity as WWC’s receiver, the absence of clear authority and specific cost recovery could become an obstacle to its full and complete recovery of

those costs.” Petition at ¶ 30. The OCA agrees that PAWC should be able to recover those prudent and reasonable expenditures to satisfy its duties and obligations as receiver for WWC. Petition at ¶ 29. PAWC is also correct that the Ex Parte Order, Appendix A, authorizes PAWC to establish a deferred account for improvements made. The OCA submits, however, the OCA does not agree with the Company’s proposed methodology to recover those costs. PAWC’s proposed methodology stretches beyond the bounds of the law.

PAWC states that it must incur Operations and Maintenance (O&M) expenses, pursuant to the Ex Parte Order and the Public Utility Code, to provide safe, adequate and reasonable service to WWC customers. Petition at ¶ 26. In its Petition, PAWC identifies that as of April 9, 2019, it has incurred O&M expenses in the amount of \$20,457.15. In addition, PAWC states that it has already incurred capital costs in the amount of \$5,017.36 and that it anticipates that if it makes the improvements that it identified in Exhibit A to the Petition, the Company will incur additional capital expenditures of approximately \$163,734.88. Petition at ¶ 27, Exh. A. As provided by the Ex Parte Order, the Company has recorded O&M expenses that have been incurred to date in a deferred account. Petition at ¶ 27. PAWC expects that the amounts that WWC will be able to repay PAWC for its expenditures will be *de minimus*. Petition at ¶ 28.

PAWC’s Petition presents two scenarios under which it requests rate recovery. PAWC requests in either scenario that the Company be permitted to recover all amounts (both O&M expenses and capital expenditures) it incurred on behalf of WWC during the receivership in excess of the purchase price and amounts collected by PAWC from WWC’s customers, through a regulatory asset. Petition at ¶ 31-32. The OCA does not oppose the creation of a regulatory asset, in this case, for future recovery of the Company’s reasonable and prudent *pre-acquisition* O&M

expenses, capital expenditures and related depreciation and capital costs, and transaction and closing costs.

The OCA does not agree, however, with the Company's proposed treatment of the regulatory asset and proposed cost recovery mechanism. The OCA has several concerns with PAWC's proposed approach. PAWC wants to both invoice WWC for its expenditures and record them in a regulatory asset and recover them from customers in future base rate cases. Petition at ¶ 32 (A)-(C). In the case of another utility acquiring WWC, PAWC wants the third option of recovering the costs from the acquiring utility. Petition at ¶¶ 24, 31. The OCA submits that it would not be appropriate to both invoice WWC and/or the buyer and at the same time charge those amounts to PAWC customers. PAWC should credit any amounts received from WWC, another buyer and/or WWC customers to the regulatory asset. Even *de minimus* amounts should be correctly accounted to the regulatory asset.

If the Commission orders WWC to be sold to PAWC, then the Company also requests to defer the depreciation and capital costs it incurs for capital expenditures and non-DSIC-eligible capital expenditures "incurred between the date of closing on the acquisition and the effective date of base rates established in PAWC's first rate case after the acquisition." Petition at ¶ 32(B). The OCA submits that the Company's proposed deferral of depreciation and capital costs is not appropriate here. PAWC's proposed treatment only applies to acquisitions made pursuant to Section 1329 of the Public Utility Code. The Company's proposed treatment is nearly identical to the post-acquisition treatment identified in Section 1329 of the Public Utility Code. Section 1329(d)(4) of the Public Utility Code states that:

The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. The acquiring public utility

may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.

66 Pa. C.S. § 1329(d)(4). Section 1329(f) states that “depreciation on an acquiring public utility’s post-acquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes.” 66 Pa. C.S. § 1329(f)(2). While the Company does not specifically reference Section 1329 of the Public Utility Code in its Petition, the OCA submits that PAWC has impermissibly requested treatment of its cost recovery in a manner similar to that set forth in Section 1329 of the Public Utility Code. 66 Pa. C.S. § 1329(c),(d). PAWC’s language assumes that the Company can recover capital expenditures and depreciation expenditures in the manner set forth in Section 1329, and the OCA submits that this accounting treatment is not available or appropriate for the present acquisition.

Here, WWC customers do not currently have any DSIC-eligible expenditures because WWC customers are not a part of PAWC’s Long-Term Infrastructure Improvement Plan (LTIIIP). PAWC cannot treat WWC customers as if they were already subject to PAWC’s tariff. Section 1329 of the Public Utility Code carved out an exception to the general rule for the treatment of DSIC-eligible expenditures and depreciation expenditures for water and wastewater acquisitions that are not applicable to WWC. The special treatment authorized under Section 1329 is not applicable to a non-1329 acquisition such as in this case.

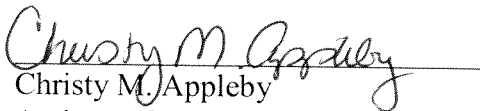
In summary, the OCA does not oppose PAWC’s right to receive cost recovery for its prudent and reasonable costs, but such cost recovery must be provided in accord with the Public Utility Code and the Commission’s regulations. The OCA submits that PAWC should be permitted to create a deferred account pursuant to the Commission’s Ex Parte Order and a regulatory asset for pre-acquisition and closing costs, as discussed above. PAWC, however, must appropriately account for any credits received to the regulatory asset, no matter how *de minimus*,

and PAWC may not double-recover the costs from ratepayers, WWC and, if applicable, another buyer. Moreover, PAWC should not receive special regulatory treatment for *post-acquisition* costs, including capital costs and depreciation because such treatment is not available or appropriate for non-Section 1329 proceedings.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate submits that the Commission's Ex Parte Order in this matter does not need to be amended as requested by Pennsylvania-American Water Company and its request should be denied. The OCA submits that PAWC should be permitted to create a regulatory asset for future recovery of prudent and reasonable pre-acquisition expenditures, but should be required to account for any credits to the regulatory asset received. PAWC should also be denied its requested extension of Section 1329-like treatment to post-acquisition costs.

Respectfully Submitted,


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