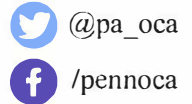


COMMONWEALTH OF PENNSYLVANIA



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May 28, 2019

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

Re: Pennsylvania 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 Pennsylvania-American Water Company's Petition for Reconsideration of Staff Actions, 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,

Handwritten signature of Christy M. Appleby in black ink.

Christy M. Appleby
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Enclosures:

cc: Honorable Joel H. Cheskis
Office of Special Assistants
Certificate of Service
*272800

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO THE PETITION OF
PENNSYLVANIA-AMERICAN WATER COMPANY
FOR RECONSIDERATION OF
STAFF ACTIONS

Pursuant to 52 Pa. Code Section 5.61, the Office of Consumer Advocate (OCA) hereby submits this Answer to the Petition of Pennsylvania-American Water Company for Reconsideration of Staff Actions (Petition). The Petition seeks reconsideration of the Secretarial Letter issued on May 8, 2019. The Secretarial Letter stated that the accounting treatment sought by Pennsylvania-American Water Company (PAWC) in a Petition for Amendment and Deferred Accounting Treatment (Accounting Petition) would be addressed as part of the ongoing Section 529 proceeding. The Secretarial Letter determination to address the matter as a part of the above-referenced docket is appropriate and PAWC's Petition for Reconsideration of Staff Action should be denied. As set forth below and in the April 29, 2019 OCA Answer to PAWC's Accounting Petition, the OCA does not agree that the Pennsylvania Public Utility Commission's (Commission) Ex Parte Order in the above-referenced dockets needs to be amended. The OCA also does not agree that the Accounting Petition requires expedited treatment.

I. INTRODUCTION

On May 17, 2019, PAWC filed its Petition for Reconsideration of Staff Actions in response to the May 8, 2019 Secretarial Letter. The Secretarial Letter was issued in response to the Company's April 19, 2019 Petition for Amendment and Deferred Accounting Treatment at the above-referenced dockets. On April 29, 2019, the Office of Consumer Advocate and the Bureau of Investigation and Enforcement (I&E) filed Answers in opposition to the Accounting Petition. As the Secretarial Letter correctly summarized, "those Answers contest the averments of the Petition (OCA Answer at 6-8) and seek to address the requested relief at the currently scheduled hearings (BIE Answer ¶ 37)." May 8, 2019 Secretarial Letter. The Secretarial Letter determined to address the matter "for disposition according to the procedural schedule at the above-referenced docket." May 8, 2019 Secretarial Letter.

With its Petition for Reconsideration, PAWC requests that the Staff's decision to refer the Accounting Petition to the Administrative Law Judge (ALJ) assigned to the above-referenced docket be reversed. The OCA submits that PAWC's Petition for Reconsideration should be denied. PAWC's Petition does not meet the Duick standard, and moreover, the issues raised in the Company's Accounting Petition and the Petition for Reconsideration are most appropriately addressed in the context of the currently pending Section 529 proceeding. See, Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982), 1982 Pa. PUC LEXIS 4, *12-13 (Duick).

II. LEGAL STANDARD

The Commission set forth the standard applied to petitions for reconsideration or amendment in Duick, 56 Pa. PUC at 559, 1982 Pa. PUC LEXIS at *12-13, where it stated:

A petition for reconsideration, under the provisions of 66 Pa. C.S. 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in

whole or part. In this regard we agree ... that "[p]arties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them ... " What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

In further delineating the standard for petitions for reconsideration, in Pa. PUC v. PECO Energy

Co., 1999 Pa. PUC LEXIS 24, *10-11, the Commission provided:

[B]ecause a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under the appropriate circumstances.

We have held that such petitions must make new or novel arguments not previously considered or raise matters, which are designed to convince us to exercise our discretion to rescind or amend the Order under consideration.

As such, a justifiable petition for amendment should present new or novel arguments.

In its Petition for Reconsideration, PAWC argues that it has met the Duick standard because "the Emergency Order did not address certain critical issues that require expeditious resolution." Petition for Reconsideration at 5-6. PAWC raised the same issues in its Accounting Petition, and the Commission through its Secretarial Letter determined to defer the issues to be addressed in the context of the above-referenced dockets, including the pending Section 529 proceeding. The OCA submits that Duick requires "new or novel arguments," and PAWC's repetition of its arguments made in its Accounting Petition do not constitute "new or novel arguments."

III. ANSWER

A. The Commission's Ex Parte Emergency Order Does Not Need To Be Amended, And The Matter Can And Should Be Addressed By The ALJ.

In PAWC's Accounting Petition, the Company requested amendment of the Ex Parte Order in three respects: (1) authority to make capital improvements to address immediate, short-term and

long-term issues (Accounting Petition at ¶¶ 13-16); (2) authority to seek recovery in rates of all amounts it incurred on behalf of Winola Water Company (WWC) during the receivership, including capital expenditures, through a deferred account and the creation of a regulatory asset (Petition at ¶¶ 24-33); and (3) authority to bill customers (Accounting Petition at ¶¶ 17-24). In its Petition for Reconsideration, PAWC raised these same three issues. Petition for Reconsideration at 6-11.

In its Petition for Reconsideration, PAWC argues that the Commission erred in referring the matter to the OALJ because the Petition seeks an amendment to the Commission Order, and only the Commission has the authority to amend a Commission Order. Petition for Reconsideration at 3. PAWC argues that the ALJ lacks the authority to amend a Commission Order, and that the only way that PAWC could obtain relief from the Commission would be to file Exceptions to the ALJ's decision at some point in the future. Petition for Reconsideration at 3-4. The Secretarial Letter correctly referred the matter to the OALJ for determination regarding the factual averments identified in the Accounting Petition. Moreover, the OCA submits that PAWC's Petition for Reconsideration is unnecessary because the Commission's Ex Parte Order is clear and does not require amendment. See, OCA Accounting Petition Answer at 4. Moreover, appropriate cost recovery can be achieved and assured through the pending 529 Investigation proceeding.

PAWC requests clarification that the Company has the authority to undertake the necessary capital improvements for the Department of Environmental Protection (DEP) to lift the Do Not Consume Order. Petition for Reconsideration at 6-8. PAWC argues that "one could reasonably argue that the Emergency Order requiring PAWC *to develop a list* of recommended capital improvements actually denied PAWC authority to make those capital improvements" and that "it could be argued that the Emergency Order intended the acquiring public utility-not the Receiver – to make the capital improvements." Petition for Reconsideration at 7. The OCA submits that

PAWC's argument is contrary to the clear language and intent of the Ex Parte Order. The purpose of the Ex Parte Order is for PAWC to assume operational control of WWC. The Ex Parte Order specifically orders PAWC, as the *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 PAWC to create more than a list of required improvements. 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)-(g); Accounting Petition at ¶¶ 13-16. The Ex Parte Order broadly provides PAWC with 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 argues that "it is unreasonable to expect the Receiver to undertake significant capital improvements without clear assurances of its ability to recover the costs of those improvements." Petition for Reconsideration at 8. PAWC requests to be made whole for all prudent and just and reasonable costs it incurs as receiver. Accounting Petition at ¶ 29. PAWC specifically requests deferred accounting treatment and the creation of a regulatory asset. Accounting 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 also 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 in the OCA Answer. OCA Answer to Accounting Petition at 5-9. PAWC's proposed methodology stretches beyond the bounds of the law.

In its Accounting Petition, 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. Accounting Petition at ¶ 26. PAWC identifies that as of April 9, 2019, it had 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. Accounting 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. Accounting Petition at ¶ 27. PAWC expects that the amounts that WWC will be able to re-pay PAWC for its expenditures will be *de minimus*. Accounting Petition at ¶ 28.

PAWC's Accounting Petition presents two scenarios under which it requests rate recovery. PAWC requested 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. Accounting 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. As set forth in the OCA's Answer to the Accounting Petition, the OCA has several concerns with PAWC's proposed approach. OCA Answer to Accounting Petition at 5-9. 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.

Accounting 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. Accounting 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 credited 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.” Accounting 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 municipal 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.

PAWC's final requested amendment is to allow the Company to begin billing customers for services rendered on and after January 1, 2019. Accounting Petition at ¶¶ 17-23; Petition for Reconsideration at 10-11. 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.

The OCA submits that the issues identified in PAWC’s Petition can and should be addressed in the above-referenced dockets. PAWC’s Petition for Reconsideration should be denied, and the Secretarial Letter should be affirmed. The matter should be referred to the ALJ for resolution.

B. PAWC’s Alternative Request To Strike The Statement in Secretarial Letter Requiring The Petition To Considered “According To The Procedural Schedule” Should Be Denied.

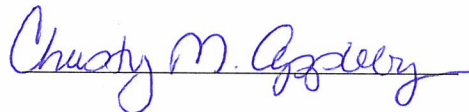
PAWC requests in the alternative to strike the Secretarial Letter statement that “You are advised that the matter addressed in the Petition is referred to the Office of Administrative Law Judge for disposition according to the procedural schedule at the above-referenced dockets.” Petition for Reconsideration at 11-12. PAWC requests that the matter be considered on a separate, expedited track. *Id.* at 11. The OCA submit that there is no need to strike this statement or to expedite resolution of the issues raised in PAWC’s Accounting Petition through a separate parallel track in the proceeding. The Ex Parte Emergency Order has granted PAWC the authority to take the necessary actions as receiver and can be assured of appropriate cost recovery for those actions. No expedited treatment should be necessary to resolve the cost recovery issues.

The OCA submits that one consideration that should be addressed is that PAWC will need to present its affirmative evidence regarding its proposed cost recovery methodology in the Direct Testimony portion of the Section 529 Investigation proceeding. This matter can be directly addressed with the ALJ and parties as a part of the Section 529 Investigation proceeding.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate submits that Pennsylvania-American Water Company's Petition for Reconsideration should be denied. The Commission's Ex Parte Order does not need to be amended as requested by the 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 for post-acquisition costs. The assigned Administrative Law Judge, ALJ Cheskis, can address these issues in the context of the instant dockets.

Respectfully Submitted,



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DATED: May 28, 2019
273057.doc

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility :
Commission, Bureau of : Docket Nos. C-2018-2644592
Investigation and 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 Pennsylvania-American Water Company's Petition for Reconsideration of Staff Actions, 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 28th day of May 2019.

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