

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca
 /pennoca

FAX (717) 783-7152
consumer@paoca.org

February 6, 2020

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

Re: Application of Pennsylvania-American Water
Company Pursuant to Sections 507, 1102 and
1329 of the Public Utility Code for Approval
of its Acquisition of the Wastewater System
Assets of Kane Borough Authority
Docket No. A-2019-3014248

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (OALJ)
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Bureau of Technical Utility Services (email only)
Certificate of Service

*283265

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American :
Water Company Pursuant to Sections 507, :
1102 and 1329 of the Public Utility Code for : Docket No. A-2019-3014248
Approval of its Acquisition of the Wastewater :
System Assets of Kane Borough Authority :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, 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 6th day of February 2020.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Sharon E. Webb, Esquire
Daniel G. Asmus, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

David P. Zambito, Esquire
Jonathan P. Nase, Esquire
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Christ Maloni Hoover

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: February 6, 2020
*283269

Harrison W. Breitman, Esquire
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Santo G. Spataro, Esquire
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American :
Water Company Pursuant to Sections 507, :
1102 and 1329 of the Public Utility Code for : Docket No. A-2019-3014248
Approval of its Acquisition of the Wastewater :
System Assets of Kane Borough Authority :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq* and 66 Pa. C.S. § 1329. Through this Application, filed on December 2, 2019¹, Pennsylvania-American Water Company (PAWC or Company) seeks Commission approval for the acquisition of the Borough of Kane Authority's (Authority or Kane) wastewater collection and treatment system (System), and the right of PAWC to provide wastewater service to the areas served by the Authority in the Borough of Kane (Borough) and in a portion of Wetmore Township (Township) in McKean County. PAWC also seeks approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code, as well as approval of the collection of a Distribution System Improvement Charge (DSIC) prior to the Authority's first post-acquisition rate case, accrual of Allowance for Funds Used During Construction (AFUDC)

¹ The original application was amended on December 6, 2019 in response to a letter PAWC received from the Commission's Bureau of Technical Services (TUS) listing missing application information.

for post-acquisition projects not recovered through the DSIC for book and ratemaking purposes, deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and the inclusion, in its next base rate case, of a claim for transaction and closing costs related to the acquisition. Application at 2. PAWC also requests the approval of the Asset Purchase Agreement (APA) with the Authority as well as other municipal agreements pursuant to Section 507 of the Public Utility Code. Application at 3. The Authority provides wastewater service to 2,019 customers, including 1,847 residential, 162 commercial, 3 industrial, and 7 municipal customer connections. Application at 4.

The OCA files this Protest in order to ensure that the application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and regulations.

Specifically, the OCA avers as follows:

1. The Protestant is Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorney for the purpose of receiving service of all documents in this proceeding is Christine Maloni Hoover, Senior Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of PAWC's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3).

4. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a). See City of York v. Pa. P.U.C., 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); see also Popowsky v. Pa. P.U.C., 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52 Pa. Code Section 53.45(b)(1-4) and the order entered in McCloskey v. Pa. P.U.C., 1624 CD 2017 (Oct. 11, 2018) (New Garden), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193 (FSIO). The OCA requests that a smart public input hearing be scheduled with notice to PAWC’s existing customers and to Kane’s existing customers. Moreover, the OCA requests that a smart public input hearing be held no later than approximately four weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearing will ensure that both the existing and acquired customers have a reasonable opportunity to be heard.

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market valuation or the purchase price,

whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This recently added provision is an alternative to the use of original cost, less depreciation for ratemaking purposes, when a public utility acquires municipal water and wastewater assets. PAWC proposes to pay \$17,560,000. PAWC St. 3 at 6. The original cost of the assets is \$21,023,527, and the original cost less depreciation is \$12,070,455. Appendix A-5.1.

8. The Authority's Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming indicated a fair market value of \$22,885,000. Appendix A-5.2. The PAWC UVE appraisal conducted by Associated Utility Services, Inc. (AUS) indicated a fair market value of \$24,491,405. Appendix A-5.1. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$23,688,203. PAWC St. 3 at 6. The valuation experts were paid \$38,931 to date for AUS and of \$74,920 for Gannett Fleming for the Fair Market Value Appraisals. Appendix A-7.1; Appendix A-7.2. PAWC estimates that it will incur transaction and closing costs of \$787,000 to \$997,000. Appendix A-10.

9. PAWC claims that the rate commitments discussed in the APA do not fall within the definition of "rate stabilization plan" as defined by 66 Pa. C.S. Section 1329 because PAWC has not made any commitments to control rates beyond Closing. See Application at 5; PAWC St. 3 at 15-16. As such, base rates for the Authority's customers will be adjusted without any form of contractual restriction in PAWC's first base rate case which includes the Authority's system. PAWC St. 3 at 15. Usage rates for Kane residential sewer customers with a 5/8" meter are now set at a minimum charge, including 2,000 gallons, of \$41.11 per month, a volumetric charge of \$0.66 per hundred gallons for usage from 2,100 gallons to 10,000 gallons, \$0.733 per hundred gallons for usage from 10,100 gallons to 30,000 gallons, and \$0.80 per hundred gallons for usage of 31,000 gallons or higher. Appendix-A-18-a. Unmetered Kane sewer customers currently pay a flat rate of \$66.74 per month. Appendix-A-18-a. PAWC commits to initially

charge the Authority’s customers the minimum charge and volumetric charges in effect at closing. Application at 5; PAWC St. 3 at 8. PAWC testimony further indicates that “[a]fter PAWC closes the Transaction, System customers will be subject to PAWC’s prevailing wastewater tariff on file with the Commission with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service.” PAWC St. 3 at 14.

10. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code.

a. The valuation information provided with the Application is not sufficient to determine whether PAWC’s ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation.

b. The OCA will also examine the impact that the ratemaking rate base will have on the rates of existing and acquired customers to assess the benefits and detriments of the acquisition. The OCA prepared the following chart, utilizing estimates provided by the Company², to demonstrate the impact of the acquisition:

Residential Customers	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
Borough of Kane	3,630 gal/month	\$24.12	46.50%
PAWC Wastewater	3,630 gal/month	\$1.62	2.50%
PAWC Water	3,630 gal/month	\$0.06	0.10%

c. In addition, PAWC states that it is not proposing a rate stabilization plan; however, it indicates that “rate commitments” are a part of the proposed transaction. Application at 5, footnote 2. The OCA will examine the proposal to determine whether it

² Compiled from Appendix-A-18-d.

is a rate stabilization plan and whether it is adequately supported and reasonable or alternatively whether the rate commitments are reasonable. The OCA will examine the current rates and the proposed tariff.

d. Information is provided regarding the estimated costs of planned investment in the system. PAWC estimates that the capital costs for the 5-year capital plan for the Authority's system will be \$11,213,400. PAWC Exh. MJG-1. The OCA will examine the information to determine what impact the capital improvements will have on the cost of service.

11. The OCA submits that additional information is necessary to determine if the proposed rates, and PAWC's request for an approved ratemaking rate base of \$17,560,000 for the Authority's system are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

12. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit PAWC's existing customers and the acquired customers.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including a smart telephonic public input hearing for the buyer and seller's customers, held approximately four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,



Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Santo G. Spataro
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Dated: February 6, 2020
*282027

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Pennsylvania-American Wastewater Company (PAWC or Company) of the Borough of Kane Authority's (Authority) wastewater assets.

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC's current customers and the acquired Authority customers. The Acting Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Acting Consumer Advocate will ensure that the ratepayers receive proper notice in accordance with the Public Utility Code and public policy. The Acting Consumer Advocate will investigate the proposed acquisition to determine if there are substantial affirmative public benefits and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

PAWC serves approximately 74,425 wastewater customers in Pennsylvania. The Borough of Kane Authority provides direct wastewater service to 2,019 customers, including 1,847 residential, 162 commercial, 3 industrial, and 7 municipal customer connections in McKean County.