


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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March 10, 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 Prehearing Memorandum in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "H. Breitman".

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

Enclosures:

cc: The Honorable Joel H. Cheskis (OALJ)  
Certificate of Service

\*284950

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American Water :  
Company Pursuant to Sections 507, 1102 and :  
1329 of the Public Utility Code for Approval : Docket No. A-2019-3014248  
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 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 10<sup>th</sup> day of March 2020.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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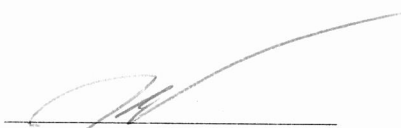
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Dated: March 10, 2020  
\*284822

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 the Borough of Kane :  
Authority :

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PREHEARING 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 Prehearing Conference Order issued by Administrative Law Judge Joel H. Cheskis on February 7, 2020, the Office of Consumer Advocate (OCA) provides the following:

**I. INTRODUCTION**

On December 2, 2019, Pennsylvania-American Water Company (PAWC) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the Borough of Kane Authority's (Authority) wastewater collection and treatment system, the right of PAWC to provide wastewater service in the areas served by the Authority, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated December 11, 2019, the Commission conditionally accepted the Application. The Commission required individual notice to be provided to PAWC's existing water and wastewater customers, that PAWC ensure concurrent notice is provided to all current Authority wastewater customers,

and that newspaper notice is provided in the Authority's area. Upon completion, PAWC was directed to file a verification that the notice has been provided.

On December 27, 2019, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement. The OCA filed a Protest and Public Statement on February 6, 2020. On February 10, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. As of March 2, 2020, the OCA has obtained and reviewed thirteen (13) informal complaints from both Authority customers and existing PAWC customers.

On January 22, 2020, PAWC filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the December 11, 2019, Secretarial Letter. By Secretarial Letter dated February 6, 2020, the Commission informed PAWC that it had accepted the Application for filing. A prehearing conference order was issued on February 7, 2020, directing the parties to submit a prehearing conference memorandum on March 10, 2020.

## **II. SERVICE ON THE OCA**

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocates Christine Maloni Hoover and Erin L. Gannon, and by Assistant Consumer Advocates Harrison W. Breitman and Santo G. Spataro. Two copies of all documents should be served on the OCA as follows:

Erin L. Gannon  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, Forum Place 5th Floor  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
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Email: OCAKane@paoca.org

### **III. DISCOVERY**

The ALJ directed the parties in the Prehearing Conference Order to review the regulations relating to discovery due to the expedited schedule under Section 1329, which requires a Commission Order on the Section 1329 request no later than six months after the filing and final acceptance of such application. The OCA has agreed to the Company's proposed discovery rule modifications, which were filed on March 2, 2020. The OCA has served four sets of discovery to date.

### **IV. WITNESS**

The OCA intends to present the testimony of Ralph Smith (Financial, Ratemaking, Appraisal and Policy Issues). Mr. Smith's contact information is as follows:

Ralph Smith  
Larkin & Associates  
15728 Farmington Road  
Livonia, MI 48154  
rsmithla@aol.com

To the extent necessary, the OCA's witnesses will present testimony regarding the impact of the proposed transaction on PAWC's existing customers and the acquired customers, and other financial, technical and ratemaking issues presented in this proceeding.

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 Your Honor and all parties of record immediately.

### **V. ISSUES**

The OCA is participating in this proceeding to ensure the interests of PAWC's existing customers and acquired customers are protected. Based upon a preliminary analysis of the

Application, the OCA has compiled a list of issues which it anticipates will be included in its investigation. It is anticipated that other issues may arise and may be pursued once all of the answers to the OCA's interrogatories have been received and analyzed.

The issues set forth below will be analyzed and presented as appropriate by the OCA with the assistance of its expert witnesses:

(1) Provision of Safe, Adequate and Reasonable Service at Just and Reasonable Rates: The Asset Purchase Agreement provides that PAWC will pay \$17,560,000 for the Authority's wastewater collection and treatment system assets. PAWC seeks to have the purchase price approved for inclusion in rate base under Section 1329, as part of this proceeding. The OCA will examine each appraisal and the requested rate base determination.

(2) Notice: The OCA will examine whether PAWC's notice to ratepayers provided adequate and accurate notice.

(3) Substantial Affirmative Benefits: The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit PAWC's existing customers.

(4) Conditions: The OCA will examine whether any conditions should be imposed upon the proposed transfer to ensure that PAWC's customers are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations.

The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

## **VI. PUBLIC INPUT HEARINGS**

In *McCloskey v. Pa. P.U.C.*, the Commonwealth Court concluded that, in an Application proceeding under Section 1329, individual customer notice of the proposed sale has to be given to

all ratepayers as well as an opportunity for them to participate in the proceeding. 195 A.3d 1055 (Pa. Commw. 2018) (*New Garden*). As such, the OCA respectfully requests that the Commission conduct one smart public input hearing for the PAWC and Kane Borough customers impacted by the acquisition. The OCA proposes the week of March 23<sup>rd</sup> for a telephonic smart public input hearing. The OCA will work with the parties, ALJ Cheskis, and the Commission's scheduling staff to reach a mutually agreeable hearing date.

## **VII. SCHEDULE**

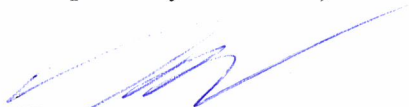
The OCA proposes the following schedule, which it understands to be acceptable to all parties:

Other Parties Direct Testimony	March 27, 2020
Rebuttal Testimony	April 9, 2020
Surrebuttal Testimony	April 16, 2020
Rejoinder Outline	April 17, 2020
Hearings	April 20, 2020-April 21, 2020
Main Briefs	May 1, 2020
Reply Briefs	May 8, 2020
Recommended Decision	June 8, 2020
Public Meeting	August 6, 2020
End of six month suspension period	August 6, 2020

## VIII. SETTLEMENT

The OCA is willing to engage in settlement discussions with all parties.

Respectfully submitted,



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DATED: March 10, 2020  
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