

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 24, 2020

Via Electronic Mail Only

The Honorable Joel H. Cheskis
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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 Judge Cheskis:

Enclosed please find a corrected copy of the OCA's Statement in Support of Joint Petition for Approval of Settlement being submitted on behalf of the Office of Consumer Advocate in the above-referenced proceeding.

The original OCA Statement in Support was attached as Appendix D to the Joint Petition for Approval of Settlement of All Issues filed by Pennsylvania-American Water Company on April 17, 2020. The corrected Statement in Support is labeled as Appendix D – Corrected.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon

Erin L. Gannon

Senior Assistant Consumer Advocate

PA Attorney I.D. # 83487

E-Mail: EGannon@paoca.org

Enclosures:

cc: PUC Secretary Chiavetta (Letter and Certificate of Service only)
Certificate of Service

*286987

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 Statement in Support of Joint Petition for Settlement, Appendix D – Corrected, 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 24th day of April 2020.

SERVICE BY E-MAIL ONLY

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Dated: April 24, 2020
*285988

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American	:	
Water Company under Section 1102(a) of the	:	
Pennsylvania Public Utility Code, 66 Pa. C.S.	:	
§ 1102(a), for approval of (1) the transfer, by	:	
sale, of substantially all of the Borough of	:	
Kane Authority’s assets, properties and rights	:	
related to its wastewater collection and	:	Docket No. A-2019-3014248, <i>et al.</i>
treatments system to Pennsylvania-American	:	
Water Company, and (2) the rights of	:	
Pennsylvania-American Water Company,	:	
and (2) the rights of Pennsylvania-American	:	
Water Company to begin to offer or furnish	:	
wastewater service to the public in the	:	
Borough of Kane, and in a portion of	:	
Wetmore Township, McKean County,	:	
Pennsylvania	:	

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Settlement (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

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. 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. 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.

On February 18, 2020, the Borough of Kane Authority filed a Petition to Intervene. More than 18 individuals, including Authority customers and existing PAWC water and wastewater customers, filed written objections to the Application.¹

On March 6, 2020, Governor Tom Wolf issued a Disaster Proclamation in response to COVID-19.² A prehearing conference was held on March 11, 2020 before Administrative Law Judge (ALJ) Joel J. Cheskis, at which time the Stipulation Regarding Discovery Rule Modifications provided by the parties on March 2, 2020 was formally adopted. In addition, the ALJ granted the OCA's request to hold a public input hearing.

¹ One filing contains the signatures of 15 customers.

² <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees and the closing of all state offices in Dauphin County and the Capitol Complex.³ As a result, the Commission's offices and the statutory parties' offices in Harrisburg were closed. On March 19, 2020, the ALJ issued a Scheduling Order adopting a litigation schedule. The OCA submitted written direct testimony, including exhibits, in accordance with the litigation schedule on March 27, 2020.⁴

Since April 1, 2020, residents of all 67 Pennsylvania counties are under stay-at-home orders.⁵ On April 3, 2020, ALJ Cheskis advised the parties that, due to the extraordinary circumstances resulting from the COVID-19 pandemic, it would not be possible to hold a telephonic public input hearing for an indeterminable period. On April 6, 2020, the parties informed the ALJ they had reached an agreement to request that the customer objections filed in the public comment folder be admitted into the evidentiary record, in lieu of a public input hearing. Based on the progress of settlement discussions, the ALJ granted the parties request to suspend the litigation schedule. On April 17, 2020, the parties filed a Joint Petition for Approval of Settlement of All Issues. On the same date, the parties filed a Joint Stipulation for Admission of Evidence, which requested admission into evidence, *inter alia*, of the OCA's testimony and the 18 written objections by customers.

³ <https://www.governor.pa.gov/newsroom/gov-wolf-puts-statewide-covid-19-mitigation-efforts-in-effect-stresses-need-for-every-pennsylvanian-to-take-action-to-stop-the-spread>.

⁴ Direct Testimony of Ralph C. Smith, OCA Statement 1, including exhibits, on behalf of the Office of Consumer Advocate.

⁵ <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread>

II. TERMS AND CONDITIONS OF JOINT PETITION FOR SETTLEMENT

The terms of the proposed Settlement address matters raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into the acquiring utility's revenue requirement, the rate impact for existing PAWC customers and the acquired customers, the agreed upon adjustments to the appraisals, the application of the Distribution System Improvement Charge (DSIC), outreach to low income customers, and post-acquisition improvement, transaction and closing costs, as follows:

1. Ratemaking Rate Base, Settlement ¶23.

As part of this proceeding, PAWC sought to establish the ratemaking rate base for this acquisition pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329. Based on appraisals presented by PAWC and the Authority (\$24,491,405 and \$22,885,000, respectively), PAWC sought a ratemaking rate base of \$17,560,000, which was the price PAWC agreed to pay for the Authority's system. The OCA's recommended adjustments to the appraisals resulted in an average appraisal amount that is higher than the \$17,560,000 purchase price. See OCA St. 1 at 45. Thus, the OCA agreed that the ratemaking rate base should be \$17,560,000.

2. Cost of Service Study and Rates, Settlement ¶¶26-28.

In this proceeding, the OCA identified the need for PAWC to provide – in the first base rate case in which it includes the Authority's assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of Kane's wastewater system, as well as a separate cost of service study for the Kane system. OCA St. 1 at 11. These studies will provide information to establish rates that reflect the costs for the Kane system.

The settlement adopts the OCA's recommendation. Paragraph 26 provides that, in its first base rate case in which PAWC includes the Authority's assets in rate base, PAWC will submit a

wastewater cost of service study that removes all costs and revenues associated with the Kane system. Paragraph 27 provides that the Company will also provide a separate cost of service study for the Kane system. Paragraph 28 provides that, in the first rate case in which PAWC includes the Authority's assets in rate base, PAWC will propose to move the Authority's system to its cost of service (based on the separate cost of service study), unless such increase is more than 1.46 times current rates; provided that such rates do not exceed the proposed Zone 1 wastewater rate.⁶ These settlement terms will provide a means for the parties to use the cost of service data to set rates for the Authority's customers that differ, as appropriate, from rates established for other wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the Kane service area.

3. Distribution System Improvement Charge, Settlement ¶30.

The parties to the proposed Settlement agreed that PAWC may apply the DSIC to customers in the Authority's service area prior to the first base rate case in which the system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) if certain conditions are met. In particular, Paragraph 30 states that PAWC will revise its Long Term Infrastructure Improvement Plan (LTIP) to include the Borough of Kane Authority and related projects before it begins charging the DSIC to those customers. Further, Paragraph 30 provides PAWC's commitment that it will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. This provision addresses the concern raised by the OCA that projects for the Authority's customers should be in addition to, and not

⁶ The current average Borough of Kane Authority rate is \$51.87 per month based on 3,630 gallons of monthly usage. Settlement ¶29; Application, App. A-18-d. The current average PAWC rate for a residential wastewater customer using 3,630 gallons per month in Zone 1 is \$64.93. Application, App. A-18-d.

reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers. OCA St. 1 at 11, 45. This settlement term also allows for Borough of Kane Authority customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects.

4. Appraisal Adjustments, Settlement ¶24.

The OCA's witness identified several adjustments in the Utility Valuation Expert appraisals as well as the use of assumptions and adjustments that were unreasonable or inconsistent with financial and utility ratemaking practices and recommended corrective adjustments. OCA St. 1 at 24-43. The proposed Settlement reflects the Parties' acceptance of two of the OCA's adjustments. Specifically, the parties agree that, if "comparable acquisitions" are used in determining market value, the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order. Additionally, the parties agreed that, if the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified. These adjustments reflect accepted financial and ratemaking principles and help to improve the reliability of data used in appraisals and the integrity of the result. Paragraph 24 also preserves the OCA's right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings.

5. Low Income Program Outreach, Settlement ¶34.

PAWC has agreed to provide information about PAWC's low income programs in a welcome letter to the Borough of Kane Authority system customers and in a bill insert or onsert, in the first full billing cycle commencing within 30 days following closing. The information will describe the available programs, eligibility requirements and contact information for PAWC. The

OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Kane customers.

6. Allowance for Funds Used During Construction (AFUDC), Deferral of Depreciation, Transaction Costs, and Legal Fees, Settlement ¶¶31-33.

The OCA's witness recommended that any claims for AFUDC and deferred depreciation should be addressed in PAWC's next base rate case rather than an unspecified future case as proposed by PAWC. See OCA St. 1 at 11. Under the terms of the settlement, any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Kane's wastewater system assets. Further, the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. The OCA's assent to Paragraphs 31-33 should not be construed to operate as preapproval of PAWC's future requests. Paragraphs 31-33 preserves all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims. Further, to facilitate the parties' review in PAWC's next base rate case, Paragraph 33 reflects PAWC's agreement to separately identify any outside legal fees included in its transaction and closing costs under the Asset Purchase Agreement between PAWC and the Borough of Kane Authority.

7. Missing Easements, Settlement ¶35.

The OCA's witness noted that \$1,000,000 of the proceeds from the proposed transaction will be retained for up to one year following the closing date for the purposes of missing easements even though the Authority indicated that there are no easements missing. OCA St. 1 at 16. PAWC has agreed to provide a report regarding the status of any missing easements one year after the closing date of the transaction. The report will also include the dollar value of each easement

obtained during the year after closing. Providing this information will help the parties and Commission to ensure that the proceeds from the proposed transaction are being allocated in furtherance of the public interest.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement should be approved.

Respectfully Submitted,

/s/ Christine Maloni Hoover
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Dated: April 24, 2020

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