


COMMONWEALTH OF PENNSYLVANIA



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March 26, 2021

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 Royersford Borough
Docket No. A-2020-3019634

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exception in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
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Enclosures:

cc: The Honorable Marta Guhl (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*305659

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American Water :
Company Pursuant to Sections 507, 1102, and 1329 :
of the Public Utility Code for Approval of its : Docket No. A-2020-3019634
Acquisition of the Wastewater System Assets of :
Royersford Borough :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Exception, 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 26th day of March 2021.

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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 Approval of its : Docket No. A-2020-3019634
Acquisition of Wastewater System Assets of :
Royersford Borough :

EXCEPTION OF THE
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I. INTRODUCTION

On March 16, 2021, Administrative Law Judge (ALJ) Marta Guhl issued a Recommended Decision recommending approval, without modification, of the Joint Petition for Settlement (Joint Petition) filed on January 19, 2021 and entered into by Pennsylvania-American Water Company (PAWC), the Office of Consumer Advocate (OCA), the Bureau of Investigation & Enforcement (I&E), the Office of Small Business Advocate (OSBA), and the Borough of Royersford (Royersford or Borough).¹

The OCA is not withdrawing from the Joint Petition. The OCA fully supports the ALJ's recommendation to approve the Joint Petition and respectfully submits this Exception for the limited purpose of clarifying the basis and bounds of the Joint Petition related to one specific material, contested issue. Therefore, the OCA files the following Exception pursuant to Section 5.533 of Commission's regulations. 52 Pa. Code § 5.533.

II. EXCEPTION

OCA Exception No. 1: The ALJ Adopts Facts Disputed by Some of the Joint Petitioners, Not Contained in the Joint Petition and Unnecessary for Approval of the Joint Petition.

The ALJ correctly noted that Commission policy promotes settlements, as settlements promote judicial efficiency by lessening the time and expense the parties must expend in litigation. R.D. at 25. As stated by the ALJ, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Id. (citing Pa. PUC v. CS Water & Sewer Assocs., 74 Pa. PUC 767, 771 (1991)). See also Pa. PUC v. York Water Co., Docket No. R-00049165, Order (Oct. 4, 2004); Pa. PUC v. Phila. Elec. Co., 60

¹ The OCA notes that all of these parties joined in the Joint Petition.

Pa. PUC 1 (1985)). Importantly, the ALJ correctly stated that the focus of the inquiry for determining whether a proposed settlement should be recommended for approval is whether the proposed settlement terms and conditions are in the public interest. R.D. at 25.

The OCA supports the ALJ's recommendation to approve the Joint Petition without modification. The OCA submits, however, that certain findings of fact made by the ALJ should not be adopted by the Commission. This is because the findings address material facts that were disputed by the parties. The parties elected not to continue to litigate those material facts and, instead, chose to compromise their positions in order to reach a settlement. Moreover, the OCA submits that the findings at issue are not needed to determine whether the Settlement is in the public interest.

Relying on statements that were subject to opposing testimony undermines the Settlement and the basis for the resolution of the opposing positions through the Settlement. By resolving the issues raised by the parties through settlement, the signatory parties have chosen to leave the record as it stands while establishing the substantive provisions of the Settlement as the provisions that must be judged to be in the public interest. It is not necessary, reasonable, or appropriate to use contested facts as findings that are then used to support the determination that the Settlement is in the public interest.² The OCA is unable to address the evidence that it presented to rebut those contested facts because, as a signatory to the Joint Petition, it did not file a brief that would have provided legal argument regarding the contested facts.

² The Commonwealth Court has previously noted that "Factual findings must be supported by substantial evidence, which is 'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" HIKO Energy, LLC v. Pa. PUC, 163 A.3d 1079, 1124 (Pa. Cmwlth. 2017) citing Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlth. 2015).

As such and as discussed further below, the OCA respectfully requests that the following findings of fact should not be adopted by the Commission:

71. By adding additional connections to the entire PAWC system, there will be more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. PAWC St. No. 1 p. 17; PAWC St. No. 1-R p. 16.
73. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of increased environmental requirements, is essential to the continued success and longevity of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 p. 17; PAWC St. No. 1-R p. 16.

R.D. at 14.

The OCA filed testimony containing compelling evidence to dispute these findings. The OCA's expert witnesses directly challenged the general statement that the proposed acquisition would benefit existing customers by spreading costs over a larger customer base because the OCA's witnesses found that the transaction resulted in increasing costs, not declining average costs.³ See OCA St. 2 at 12, 15-16; OCA St. 2S at 8-9. If the case had proceeded to litigation, as

³ For example, the OCA's witness testified as follows in Direct Testimony:

No. As seen above, the average rate base per acquired Royersford customer is \$8,025. My calculation of PAWC's current average rate base per customer is approximately \$6,600 (Exhibit NDE-1). The average rate base per customer of acquired Royersford customers is higher than that of PAWC's current customers. With that, I explained above that the revenues of Royersford customers are also not enough to cover the cost of service as a result of PAWC's acquisition. If acquired customers are more expensive than the existing customers, and the acquired customers' revenues are not sizeable enough to recover their own costs of service, economies of scale are not achieved.

OCA St. 2 at 15-16. Additionally, following OCA witness DeAngelo's review of the Company's Rebuttal Testimony, Ms. DeAngelo testified as follows in Surrebuttal Testimony:

No, the Company does not quantify any cost reductions or efficiencies that will be produced by the Royersford acquisition. Generally for utilities, acquisitions increase economies of scale because fixed costs can be spread to more customers. However, at their current rates, Royersford customers will not even be covering their full cost of service under PAWC ownership at the proposed \$13 million rate base. Therefore, they cannot make any contribution to overall fixed costs.

OCA St. 2S at 8-9.

opposed to settlement, the OCA would have briefed this contested issue. Instead of litigating, however, the parties reached a resolution through a Settlement in which certain issues would be put aside in furtherance of compromise in order to agree upon a Settlement between the parties that would be in the public interest. As settlements allow flexibility in reaching amicable resolutions as long as the settlement is in the public interest, the Joint Petition purposefully did not address the testimony by PAWC or the testimony by OCA on this contested issue.

The OCA filed a similar Exception in two prior, settled Section 1329 proceedings.⁴ In both proceedings, the Commission granted the OCA's Exceptions on this issue.⁵ The focus of the inquiry for determining whether a proposed settlement should be recommended for approval is whether the proposed settlement terms and conditions are in the public interest. See R.D. at 25. The Recommended Decision goes beyond the scope of the proposed Settlement terms by re-introducing this issue and adopting PAWC's contested testimony as fact. Moreover, the findings at issue are not material to the Commission's review and decision whether to adopt the Joint Petition. As such, the OCA submits that the Commission should not adopt Findings of Fact nos. 71 and 73.

The OCA has discussed its Exception and requested relief with the other parties to the Settlement. The OCA has been authorized to state that the OSBA supports the OCA's request. I&E does not oppose the request. It is the OCA's understanding that PAWC will file a reply and that the Borough reserves its right to file a reply.

⁴ See Application of PAWC for the Acquisition of the Water Assets of Steelton Borough Authority, Docket No. A-2019-3006880, OCA Exceptions (Aug. 16, 2019); Application of PAWC for the Acquisition of the Wastewater Assets of Exeter Township, Docket No. A-2018-3004933, OCA Exceptions (Aug. 16, 2019).

⁵ See Application of PAWC for the Acquisition of the Water Assets of Steelton Borough Authority, Docket No. A-2019-3006880, Order at 31 (Oct. 3, 2019); Application of PAWC for the Acquisition of the Wastewater Assets of Exeter Township, Docket No. A-2018-3004933, Order at 27 (Oct. 3, 2019).

III. CONCLUSION

The OCA respectfully requests that the Commission clarify, or refrain from adopting, certain aspects of the Recommended Decision, consistent with the foregoing Exception. With that qualification, the OCA supports the ALJ's recommendation to approve the Joint Petition for Settlement without modification.

Respectfully submitted,

/s/ Erin L. Gannon

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Dated: March 26, 2021
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