


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 23, 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 York City Sewer Authority
Docket No. A-2021-3024681

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,

/s/ Harrison W. Breitman
Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
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Enclosures:

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

*314050

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-2021-3024681
Acquisition of the Wastewater System Assets of :
York City Sewer 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 23rd day of July 2021.

SERVICE BY E-MAIL ONLY

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Dated: July 23, 2021
*314052

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 Acquisition of the Wastewater : Docket No. A-2021-3024681
Collection and Treatment System Assets :
owned by the York City Sewer Authority and :
Operated by the City of York :

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 July 1, 2021, Pennsylvania-American Water Company (PAWC or Company) seeks Commission approval for the acquisition of the wastewater collection and treatment system (System) owned by York City Sewer Authority and operated by the City of York (collectively, York City or City), and the right of PAWC to begin to offer, render, furnish and supply wastewater service in the areas served by the City in the requested territory. Application at ¶ 1. PAWC also seeks approval of the ratemaking rate base of the assets as determined under Section 1329 of the Public Utility Code. Application at ¶ 2. In addition, PAWC requests the approval of the Asset Purchase Agreement (APA) with the City pursuant to Section 507 of the Public Utility Code. Application at ¶ 3.

York City furnishes direct wastewater service to approximately 13,747 customers and seven bulk customers. Application at ¶ 9; Appendix A-17-a. The City does not differentiate by customer class. Appendix A-17-a. The system supplies wastewater service in the areas served within the City of York, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania. Application at ¶ 1.

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 Christine Maloni Hoover, Interim 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 Erin Gannon, 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 § 53.45(b)(1-4) and the order entered in McCloskey v. Pa. P.U.C., 1624 CD 2017 (Oct. 11, 2018), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193. The OCA requests that, once the Commission issues a Secretarial Letter indicating final acceptance of the application, a telephonic public input hearing be scheduled in this matter with notice to PAWC’s existing customers and to the City’s existing customers. The OCA respectfully requests that, as soon as a Secretarial Letter is issued indicating final acceptance, the public input hearing be held within approximately three weeks. Due to the short schedule in Section 1329 proceedings and the time needed for scheduling and notice, we request that this process begin prior to the prehearing conference. Expediting the scheduling of the public input hearing will ensure that both the acquiring 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 a purchase price of \$235,000,000, for the wastewater system. PAWC St. No. 1 at 11. The original cost of the assets, as determined by the engineer's report, is \$155,875,775.11, and the original cost less depreciation is \$97,106,105. Appendices A-5.1, A-15-a.

8. The City's Utility Valuation Expert (UVE) appraisal conducted by ScottMadden, Inc. (ScottMadden) indicated a fair market value of \$269,376,640. City St. No. 2 at 13; Appendix A-5.2. PAWC's UVE appraisal conducted by AUS Consultants, Inc. (AUS Consultants) indicated a fair market value of \$240,336,741. PAWC St. No. 4 at 3; Appendix A-5.1. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$254,856,690. PAWC St. No. 3 at 7; Appendix A-11. As the purchase price of \$235,000,000 is lower, PAWC requests approval to include \$235,000,000 in its ratemaking rate base. Id. AUS Consultants' fees paid to date are \$13,125. Appendix A-7.1. To date, ScottMadden's fees are \$17,512. Id. PAWC estimates that it will incur transaction and closing costs of approximately \$1,150,000 to \$1,300,000. Appendix A-10.

9. PAWC and the City agreed that PAWC will initially adopt York City's rates in effect at the time of closing of the Transaction. Application at ¶ 14.

10. Copies of the notices that will be sent to customers of PAWC and to customers of York City describing the filing and the anticipated effect on rates were provided in the Application. See Appendix A-18-d.

11. 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 is not requesting that the Commission maintain rates for a period of time beyond the next base rate

in case in the immediate proceeding, there is no contractual restriction, and the Company does not anticipate that rates for existing York City customers will be held constant after the next base rate case. See Application at ¶ 14, note 3; see also PAWC St. No. 3 at 11-12. As such, base rates for the York City customers may be adjusted in PAWC's first base rate case which includes the City's system. See PAWC St. No. 3 at 11.

12. 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 OCA will investigate the data and information provided in support of each valuation. Moreover, the OCA will investigate the information in addition to the valuation information provided with the Application that may be required to determine whether PAWC's ratemaking proposals are reasonable.

b. Regarding the acquired service territory, the OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code. In the customer notices attached to its Application, PAWC estimates the potential, incremental impact of the York City acquisition on the rates established after its next base rate case, if the acquisition is approved. See Appendix A-18-d. As presented on PAWC's notices to York City customers, PAWC estimates an across the board increase of 47.5%, or \$15.48 per month, for the acquired City wastewater customers with average usage of 3,458 gallons per month. Id. As presented on PAWC's notice to its current water and wastewater customers, PAWC estimates that residential wastewater customer rates will increase by 8.0%, or \$6.27 per month, for average usage of 3,458 gallons per month. Id. Additionally, as presented on PAWC's notice to its current water customers, PAWC estimates that residential water customer rates will increase by 1.3%, or \$0.82 per month,

for average usage of 3,458 gallons per month. Id. There is a range of potential rate impacts from the Company's proposed ratemaking rate base. The impact that the associated costs will have on the rates of existing and acquired customers must be determined to assess the benefits and detriments of the acquisition.¹

13. The OCA submits that additional information is necessary to determine if the rate impact and PAWC's request for an approved ratemaking rate base of \$235,000,000 for York City'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.

14. 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.

¹ Moreover, the rate impact estimates contained in PAWC's and York City's notices are based on the revenue and allocations approved in PAWC's last rate case and, as such, do not reflect any revenue increases or changes to allocations that may be approved as a result of PAWC's pending request to increase water and wastewater rates.

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 telephonic public input hearing for the buyer and seller's customers held four to six weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,

/s/ Erin L. Gannon

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Dated: July 23, 2021
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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 Interim Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Pennsylvania-American Water Company (PAWC) of York City Sewer Authority's (York City or City) wastewater collection and treatment assets.

The objective of the Interim Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC's current customers and the acquired City's customers. The Interim Acting Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise in violation of the Public Utility Code. The Interim Acting Consumer Advocate will ensure that the ratepayers receive proper notice in accordance with the Public Utility Code and public policy. The Interim 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 is a regulated public utility company, and furnishes wastewater service to approximately 75,341 customer accounts across Pennsylvania. York City furnishes wastewater service to approximately 13,747 customers and seven bulk customers. The City's system supplies wastewater service in the areas served within the City of York, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania.