

COMMONWEALTH OF PENNSYLVANIA



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April 11, 2023

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

Re: Application of Pennsylvania-American Water Co.
under Sections 1102(a) and 1329 of the
Pennsylvania Public Utility Code to acquire the
wastewater collection and treatment system
owned by the Butler Area Sewer Authority and to
furnish wastewater service to the public in Butler
County, Pennsylvania
Docket No. A-2022-3037047

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in this matter.

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

Respectfully submitted,

/s/ Mackenzie C. Battle
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Enclosures:

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

CERTIFICATE OF SERVICE

Application of Pennsylvania-American Water :
Co. under Sections 1102(a) and 1329 of the :
Pennsylvania Public Utility Code to acquire :
the wastewater collection and treatment : Docket No. A-2022-3037047
system owned by the Butler Area Sewer :
Authority and to furnish wastewater service to :
the public in Butler County, Pennsylvania :

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. This document was filed electronically on the Commission's electronic filing system.

Dated this 11th day of April 2023.

SERVICE BY E-MAIL ONLY

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Dated: April 11, 2023

commercial, industrial, and public customers within the City of Butler, portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland, and Summit in Butler County, Pennsylvania. Application ¶¶ 1, 8.

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 Patrick M. Cicero, Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant’s attorneys for the purpose of receiving service of all documents in this proceeding are Erin Gannon, Senior Assistant Consumer Advocate; Harrison Breitman, Assistant Consumer Advocate; and Mackenzie Battle, 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 a finding 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. PUC*, 295 A.2d 825, 828 (Pa. 1973); *see also Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 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) (“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.*, 195 A.3d 1055 (Pa. Cmwlth. 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 or virtual public input hearing be scheduled in this matter. The OCA also requests that a public input hearing be held no later than approximately three to four weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearings 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 value or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This 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 \$231.5 million for the BASA wastewater system per the Asset Purchase Agreement of October 11, 2022. Application, App. A at Article III. The original cost of the assets, as determined by the engineers’ reports, is approximately \$144 million, and the original cost less depreciation is approximately \$93 million.

Application, App. A-5.2 at 31-32, 83-85, App. 5.1 at 2.

8. PAWC's Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) indicated a fair market value of \$232,429,422. Application, App. A-5.2 at 2; BASA St. 3 at 12. The Butler UVE appraisal conducted by Weinert Appraisal and Depreciation Services, LLC (Weinert) indicated a fair market value of \$246,178,265. Application, App. A-5.1 at 1. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$239,271,522. PAWC St. 3 at 5. The valuation experts were paid \$12,750 to date for Weinert and \$16,540 for Gannett Fleming for the appraisals. Application, App. A-7. PAWC estimates that it will incur transaction and closing costs of between \$1,164,250 and \$1,286,750. Application, App. A-10.

9. PAWC proposes to implement a flat monthly base rate of \$45.50 per equivalent dwelling unit (EDU) for BASA customers and freeze that rate until the later of the first anniversary of closing or January 1, 2025.¹ Application, App. A-24-a at Section 7.04(a); Butler Twp. St. 1 at 12. PAWC also proposes to begin collecting a distribution service improvement charge from customers in the acquired system prior to the first base rate case in which the system's plant-in-service is incorporated into rates, subject to inclusion in PAWC's wastewater LTIP. Application ¶ 2; Application, App. A-4.1 at (5); PAWC St. 3 at 11-12. In the first rate case post-closing, PAWC states that it will request approval to convert customers from flat to metered rates. Application ¶ 33.

¹¹ Current rates are \$43.00 per EDU. BASA St. 2 at 5. BASA will increase rates to \$45.50 per EDU prior to closing. *Id.* at 6.

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 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. The OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code. PAWC estimates that bills for current BASA customers would increase as follows as a result of this transaction:

Butler Area Sewer Authority Wastewater Customers				
Wastewater				
Rate Class	Average Usage	Average Monthly Bill at Butler Area Sewer Authority Rates at Closing	Potential Average Monthly Bill	Potential Increase
Residential	3,212 gal/month	\$45.50	\$88.45	\$42.95 or 94.4%
Commercial	22,561 gal/month	\$273.00	\$530.71	\$257.71 or 94.4%
Industrial	528,207 gal/month	\$6,006.00	\$11,675.66	\$5,669.66 or 94.4%

PAWC St. 3 at 13-14. The potential increase is calculated by allocating 100% of the revenue deficiency created by the transaction (after the estimated Act 11 allocation of costs to water customers) to the acquired customers. *Id.* at 14. PAWC projects that bills for its existing water and wastewater customers would increase as follows as the result of this transaction:

PAWC Current Customers

Wastewater

Rate Class	Average Usage	Average Monthly Bill at PAWC Zone 1 2022 Rates	Average Monthly Bill at PAWC Zone 1 2022 Rate Adjusted for Potential Impact of Acquisition	Potential Increase
Residential	3,212 gal/month	\$106.65	\$114.12	\$7.47 or 7.0%
Commercial	22,561 gal/month	\$509.46	\$545.12	\$35.66 or 7.0%
Industrial	528,207 gal/month	\$11,143.19	\$11,923.21	\$780.02 or 7.0%

Water

Rate Class	Average Usage	Average Monthly Bill at PAWC Zone 1 2022 Rates	Average Monthly Bill at PAWC Zone 1 2022 Rate Adjusted for Potential Impact of Acquisition	Potential Increase
Residential	3,212 gal/month	\$69.24	\$69.79	\$0.55 or 0.8%
Commercial	22,561 gal/month	\$371.82	\$374.79	\$2.97 or 0.8%
Industrial	528,207 gal/month	\$5,985.08	\$6,032.96	\$47.88 or 0.8%

PAWC St. 3 at 15. In calculating the potential impact of the acquisition on its current wastewater and water customers, PAWC assumes that 33% of the wastewater revenue requirement will be shifted to its water customers. The percentage of the shift is based on the Company's last base rate case where 33% of the wastewater revenue requirement was shifted to water customers pursuant to its request under Section 1311(c) of the Public Utility Code.

11. The Asset Purchase Agreement requires that, within five years of closing, PAWC will complete capital projects in the Butler system that are estimated to cost \$75.8 million. Application, App. A-24-a at Sec. 7.11, App. A-24-a at Sch. 7.11. The impact that the costs of this acquisition, including the capital investment and proposed ratemaking rate base, will have on the rates of existing and acquired customers must be considered in assessing the benefits and detriments of the acquisition. PAWC projects that annual revenue that will be collected from BASA customers will be approximately \$12.7 million for Year One. The annual revenue requirement associated with the \$231.5 million ratemaking rate base for the Butler system is \$30.6 million. PAWC Exh. AEE-1 at 4; PAWC App. K. This produces an annual revenue deficiency of \$17.9 million to be recovered by increasing rates for existing and acquired PAWC

customers.²

12. The OCA submits that additional information is necessary to determine if the proposed rates, rate freeze, and PAWC's request for an approved ratemaking rate base of \$231.5 million for the BASA acquisition, are reasonable and lawful under the Public Utility Code. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

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

² PAWC's calculated revenue requirement and revenue deficiency do not reflect the impact of planned capital investment in Year One. *See* PAWC Exh. AEE-1 at 4. One-fifth of the planned \$75.815 million investment is \$15.163 million. At a 7.10% rate of return (the same rate of return that PAWC applies to the ratemaking rate base to calculate revenue requirement), this adds an additional \$1,076,573 to average annual revenue requirement for the first five years of PAWC ownership and increases the annual revenue deficiency to be collected from PAWC's existing wastewater and water customers from \$17.9 million to nearly \$19 million.

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

Respectfully submitted,



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Counsel for:
Patrick M. Cicero
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Dated: April 11, 2023

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 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 Butler Area Sewer Authority's (BASA or Butler) wastewater collection and treatment assets.

The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC's current customers and the acquired BASA customers. The 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. Finally, the 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 that furnishes wastewater service to approximately 97,305 customer accounts across Pennsylvania. BASA furnishes wastewater service to approximately 14,792 active residential, commercial, industrial, and public customers in Butler County, Pennsylvania.