

COMMONWEALTH OF PENNSYLVANIA



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February 14, 2025

Via Electronic Filing (E-Filing)

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

Re: Joint Application of PAWC and Corner Water for approval of the transfer, by sale, of all assets, property, and rights of Corner Water owned and used in connection with its water system to PAWC in portions of Elk and Paint Townships, Clarion County;
Docket Nos. A-2025-3052745; A-2025-3052747

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest Nunc Pro Tunc and Public Statement in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Melanie Joy El Atieh
Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. No. 209323
melatieh@paoca.org

Enclosures:

cc: Administrative Law Judge Emily DeVoe (via E-Mail: edevoe@pa.gov)
Certificate of Service

/s/ Melanie Joy El Atieh
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Dated: February 14, 2025

Ryan Morden
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Counsel for:
Darryl Lawrence
Interim Acting Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Pennsylvania American :
Water Company and Corner Water Supply : Docket Nos: A-2025-3052745
and Service Corporation Pursuant to Section : A-2025-3052747
1102 of the Public Utility Code, for :
approval of (1) the transfer to Pennsylvania :
American Water Company, by sale, of all :
property of Corner Water Supply and :
Service Corporation used and useful in the :
public service; (2) the right of Pennsylvania :
American Water Company to begin to offer, :
render, furnish and supply water service to :
the public in portions of Elk and Paint :
Townships in Clarion County, :
Pennsylvania, and (3) the abandonment by :
Corner Water Supply and Service :
Corporation of all water service :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE
NUNC PRO TUNC

Before the Pennsylvania Public Utility Commission (Commission), pursuant to 52 Pa. Code Sections 5.51, *et seq.*, the Office of Consumer Advocate (OCA) hereby files this Nunc Pro Tunc Protest to the Joint Application of Pennsylvania America Water Company (PAWC or Company) and Corner Water Supply and Service Corporation (Corner Water) (collectively, the Joint Applicants). The Joint Applicants request approval pursuant to 66 Pa. C.S. Sections 1101, 1102, 1103 of the Public Utility Code.

Specifically, the Joint Applicants are requesting: (1) the transfer, by sale, of all assets, property, and rights of Corner Water owned and used in connection with its water system to PAWC, (2) the right of PAWC to begin to offer, render, furnish and supply water service to the public in portions of Elk and Paint Townships, Clarion County, Pennsylvania, currently served by Corner, and (3) the abandonment by Corner of all water service to the public. Application at ¶ 1.

The OCA files this Protest to ensure that the approvals and certificates of public convenience are granted only if after investigation of the record evidence and hearings, PAWC has demonstrated that they are “necessary or proper for the service, accommodation, convenience or safety of the public,” pursuant to 66 Pa. C.S. Section 1103, and meet all other legal requirements of the Public Utility Code. Specifically, the OCA avers as follows:

1. The name and contact information of the protestant is as follows:

Darryl A. Lawrence, Interim Acting Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: 717-783-5048

Throughout this Protest, the protestant will be referred to as the OCA.

2. The names and contact information for the OCA’s attorneys for the purpose of receiving service of all documents in this proceeding are as follows:

Ryan Morden, Assistant Consumer Advocate
Melanie Joy El Atieh, Deputy Consumer Advocate
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3. The OCA is authorized by law to represent the interests of Pennsylvania’s utility consumers in all matters before the Commission. 71 P.S. §§ 309-1 *et seq.*

4. In reaching a decision on whether to grant the requested application the Commission must give “due consideration to the interests of consumers.” 71 P.S. §309-5(2).

5. In the Joint Application, the Joint Applicants state that they intend to proceed pursuant to Section 1102 of the Public Utility Code, whereby the Joint Applicants would seek all necessary approvals and authorizations to acquire substantially all of the regulated water assets of

Corner located within portions of Elk and Paint Townships, Clarion County. ¶ 5.

6. Corner Water serves approximately 605 customers, of which 355 are residential, 83 are commercial, 5 are industrial, 2 are public fire service, and 160 customers categorized as “other” (customers in two Mobile Home Park Communities). *Id.*

7. PAWC provides water service to approximately 686,789 customers throughout the Commonwealth. Application ¶ 6.

8. A public utility is required to first obtain a certificate of public convenience to acquire utility property and to begin to offer service within a new territory. 66 Pa. C.S. § 1102(a)(1), (3). The Commission can grant a certificate of public convenience upon finding that the granting of such is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a). The proposed transaction must “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. Cmwlth. Ct. 1972) (*City of York*). The Commission can impose conditions upon the issuance of a certificate of public convenience. 66 Pa. C.S. § 1103(a).

9. The Joint Application does not provide sufficient information to support the finding that acquired and existing customers or the public will receive a substantial affirmative benefit as a result of this proposed transaction.

10. The Joint Application provides that PAWC plans to adopt the existing tariff of Corner. Application at App. B. The Joint Application states that transaction will have no immediate effect on rates for waters service charged to PAWC and Corner existing customers. ¶ 22. PAWC has a tentative 5-year plan for upgrades of over \$4.3 million. ¶ 21. PAWC will institute an accelerated main replacement program aimed at improved System reliability and reducing water loss within the System. *Id.* The replacement program would be coordinated with the PAWC

Paint-Elk collection system's replacement program. PAWC states it would ensure compliance with EPA and DEP Lead and Copper Rule Revision requirements. *Id.* Due to regionalization and becoming a part of PAWC's system, and necessary improvements are claimed they can be completed within a reasonable period, without affecting service to existing customers. *Id.* Upon completion of the transaction, PAWC will replace all transferred customer meters within the system. *Id.*

11. The OCA submits that all of the claims made by the Joint Applicants about the benefits of the transaction and rate impact deserve scrutiny as to their impact on customers of Corner Water and PAWC.

12. As such, the OCA submits that additional information is required to determine if approval of the Joint Application will result in affirmative public benefit. It is not clear from the filing that this standard has been met and further investigation is necessary to ensure that the merger will affirmatively benefit the public in some substantial way.

13. PAWC has failed to provide sufficient information in the application to fully address the rate impact associated with this case and its various rate proposals. While rates will not be determined in this case, the rate impact of the proposed acquisition and the proposed rate freeze and extraordinary rate cap proposal must be considered in this case when weighing the relative merits of whether this application should be approved. It is also not known whether PAWC will seek acquisition adjustments under Section 1327 of the Public Utility Code, 66 Pa. C.S. Section 1327, for the water system. The risk associated with a potential future claim for acquisition adjustments should be considered in assessing the reasonableness of the proposed transaction.

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

Nunc Pro Tunc Request

15. The OCA submits this Protest nunc pro tunc and requests that the Honorable Administrative Law Judge (ALJ) Emily DeVoe grant the OCA status as an original party to the proceeding.

16. Under the Commission's regulations, parties traditionally have 60 days from the publication of notice of the Joint Application to file a protest, unless the Commission sets a different deadline in the published application. 52 Pa. Code § 5.53. Here, the Joint Application was published in the *Pennsylvania Bulletin* on January 18, 2025, and the Commission set a 16-day deadline from the publication of the notice, or by February 3, 2025. 55 Pa.B. 650.

17. On January 31, 2025, Patrick M. Cicero's resignation as the Consumer Advocate for the Commonwealth of Pennsylvania took effect, and on February 3, 2025, Attorney General David W. Sunday's appointment of Darryl A. Lawrence as the Interim Acting Consumer Advocate took effect. During the time between Mr. Cicero's resignation and Mr. Lawrence's appointment, the OCA was unable to file pleadings.

18. In the Joint Application, the Joint Applicants did not request expedited treatment of the Joint Application. Additionally, the Joint Application is submitted pursuant to Section 1102 and not Section 1329, which means there is no statutory deadline by which the Commission must render a final determination.

19. The OCA filed a notice of intervention on the same day as this Protest and therefore is a statutory intervenor in this proceeding representing the interest of consumers. See 52 Pa. Code §§ 5.72(a)(1), 5.74(b)(4); *see also* 71 P.S. § 309-4 (“[T]he Consumer Advocate is authorized, and it shall be his duty, in carrying out his responsibilities under this act, to represent the interest of consumers as a party, or otherwise participate for the purpose of representing an interest of consumers, before the commission in any matter properly before the commission...”).

20. There is no effect on the due process rights of the parties or harm to judicial economy by accepting the OCA's protest and granting the OCA party status.

21. The OCA has communicated with counsel for PAWC about its intention to be involved in this proceeding.

22. The OCA plans to participate in the Prehearing Conference that is scheduled for February 19, 2025, at 11:00 a.m., and send its Prehearing Conference Memorandum by the due date on February 18, 2025, at 12 noon.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Honorable Administrative Law Judge and the Public Utility Commission grant this Nunc Pro Tunc Protest so that the OCA can participate as a party in the proceeding.

Respectfully Submitted,

/s/ Ryan Morden

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February 14, 2025

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. Section 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 Joint Application of Pennsylvania American Water Company (PAWC) and Corner Water Supply and Service Corporation (Corner Water).

Under the Joint Application, PAWC is proposing to buy Corner Water and offer water service to Corner Water’s customers. The Joint Application seeking Commission approval of the proposed acquisition that was filed on December 31, 2024. The Joint Application was published in the *Pennsylvania Bulletin* on January 18, 2025. The OCA has determined to participate in these proceedings to protect the interests of current PAWC and Corner Water customers in Pennsylvania.

Through its participation in this proceeding the OCA seeks to ensure that any approvals, granting of certificates, and other transactions occur only if it is “necessary or proper for the service, accommodation, convenience, or safety of the public” and that PAWC’s, and Corner Water’s customers are afforded the protections to which they are entitled under the Public Utility Code and the Commission’s regulations.