

COMMONWEALTH OF PENNSYLVANIA



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February 12, 2026

Via Electronic Mail Only

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of the City of Pittston, *Nunc Pro Tunc*, Pursuant to 66 PA. C.S. § 1102(A), for a Certificate of Public Convenience to offer, furnish, render, and supply wastewater service to the public in certain portions of the Borough of Duryea, the Borough of Hughestown and Pittston Township, all in Luzerne County, Pennsylvania
Docket No. A-2026-3059911

Dear Secretary Homsher:

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

Copies have been served on the parties as indicated on the enclosed 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: The Honorable Charles E. Rainey, Jr. (email only: crainey@pa.gov)
Office of Special Assistants (email only: ra-OSA@pa.gov)

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Paul Zander, TUS (email only: pzander@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

In re: Application of the City of Pittston, :
Nunc Pro Tunc, Pursuant to 66 PA. C.S. § :
1102(A), for a Certificate of Public : Docket No. A-2026-3059911
Convenience to offer, furnish, render, and :
supply wastewater service to the public in :
certain portions of the Borough of Duryea, :
the Borough of Hughestown and Pittston :
Township, all in Luzerne County, :
Pennsylvania

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and 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 12th day of February, 2026.

SERVICE BY E-MAIL ONLY

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Dated: February 12, 2026

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Counsel for:
Darryl A. Lawrence
Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of the City of Pittston, :
Nunc Pro Tunc, Pursuant to 66 PA. C.S. § :
1102(A), for a Certificate of Public :
Convenience to offer, furnish, render, and : Docket No. A-2026-3059911
supply wastewater service to the public in :
certain portions of the Borough of Duryea, :
the Borough of Hughestown and Pittston :
Township, all in Luzerne County, :
Pennsylvania :

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 Sections 5.51-5.53, and Chapter 11 of the Public Utility Code, 66 Pa. C.S. Section 1101, *et seq.* Through this Application, the City of Pittston (Applicant or the City) seeks Commission approval, *nunc pro tunc*, for a Certificate of Public Convenience (CPC) to continue to provide wastewater service in certain portions of the Boroughs of Duryea and Hughestown and Pittston Township, Luzerne County, Pennsylvania. *Application of the City of Pittston for an Expedited Certificate of Public Convenience, Nunc Pro Tunc*, A-2026-3059911 (Jan. 16, 2026) (Application). The City is also seeking the issuance of Certificates of Filing or approvals under Section 507 of the Public Utility Code for certain agreements. Application at 1; 66 Pa. C.S. § 507.

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 Darryl A. Lawrence, 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 Harrison W. Breitman, Senior Assistant Consumer Advocate, and Ryan Morden and Olivia M. Spergel, Assistant Consumer Advocates.

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 the City's customers in the Boroughs of Duryea and Hughestown and Pittston Township are protected.

3. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the Commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. 66 Pa.C.S. § 1501. The term "municipal corporation" includes cities, boroughs, and townships. 66 Pa. C.S. § 102.

4. 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). This standard applies to any municipal corporation that acquires, constructs, or begins to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits. 66 Pa. C.S. §1102(a)(5).

5. 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).

6. 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.

7. The Commonwealth Court has held that an Applicant that has rendered water and sewer service to customers outside its boundaries, all without a certificate of public convenience, is not barred from receiving a certificate nunc pro tunc. *Application of Jefferson Estates Sewage Treatment Plant, Inc.* Docket No. A-2021-3026700 at 7, n. 11 (Order entered April 20, 2023), (citing *New Garden Twp. v. Artesian Res. Corp.*, 2019 WL 2400114 (Pa. Cmwlth. 2019) (opinion not reported).

8. Preliminarily, the OCA has identified the following matter that requires further consideration by the Commission and must be resolved prior to Commission approval of this Application.

9. The Applicant owns and operates a combined stormwater and sanitary wastewater collection system (System) that provides service to approximately 4,142 customers within the City’s municipal borders. Application at 3. The Applicant also states that it has provided wastewater service to approximately 650 customers in areas outside its municipal boundaries in Boroughs of Duryea and Hughestown and Pittston Township¹ for an indeterminate period of

¹ In its Application, the City reports that it provides service to 22 customers (21 residential and 1 commercial) in Duryea, 576 customers (558 residential and 18 commercial) in Hughestown, and 6 residential dwellings in Pittston Township. Application at 5.

time, noting that “In reviewing all available minutes of the Applicant going back decades, maps and other available materials, the Applicant is unable to confirm when and why wastewater collection and conveyance services were extended to customers in the Boroughs and the Township.” Application at 4-5.

10. On May 30, 2025, the City and Pennsylvania-American Water company (PAWC) entered into an Asset Purchase Agreement (APA) wherein the City agreed to convey substantially all of its System to PAWC (Proposed Sale) and that PAWC agreed to provide wastewater service in the territory served by the System upon receiving all necessary approvals including, but not limited to, by the Commission. Application at 4.

11. In connection with the Proposed Sale, the City “discovered that its provision of service to certain customers outside of the City’s geographic boundaries, in the Boroughs and the Township,” without a CPC, “required the City to file this *Nunc Pro Tunc* Application.” Application at 4.

12. The City bills customers served outside its municipal borders at the same uniform rates as customers located inside the City, with the exception of one commercial customer in Duryea, none of the commercial customers and five residential customers have not received bills from the City. Application at 5. In those circumstances and without explanation, the City had not been billing those customers until December 2025. *Id.* In its Application, the City avers that it corrected this error beginning in December 2025 and sent the impacted customers the City’s last quarterly bill at the same rate the City charges the customers inside the City boundaries. *Id.*

13. In a related proceeding at Docket No. A-2025-3056419, Pennsylvania-American Water Co. – Wastewater Division (PAWC) submitted an Application on January 20, 2026, to acquire the City’s System, by sale, and provide service to all customers currently served by the City.

14. The OCA submits that it is improper or, at minimum, inconsistent for the City to continue charging rates to customers outside of the City's geographical bounds in the absence of a Certificate of Public Convenience while attempting to establish jurisdiction over the customers in the Boroughs of Duryea and Hughesstown and Pittston Township without the Commission evaluating whether the System's current rates are just and reasonable, and are not unduly discriminatory or otherwise unlawful, and to ensure that service and facilities are adequate, efficient, safe, reasonable, reasonably continuous, without unreasonable interruptions or delay, and in conformity with Commission regulations and orders.

15. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issue raised above. The Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, regarding the Application.

Respectfully submitted,

/s/ Ryan Morden

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Dated: February 16, 2026

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 Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the City of Pittston's Application for a Certificate of Public Convenience, *nunc pro tunc*, to provide wastewater service to 650 existing customers outside its municipal boundaries, in the Boroughs of Duryea and Hughestown and Pittston Township.

The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interests of Exeter's extra-territorial customers. The Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Consumer Advocate will investigate the proposed Application and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.