

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 20, 2018

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 1102 and
1329 of the Public Utility Code for Approval
of its Acquisition of the Wastewater System
Assets of the Township of Sadsbury
Docket No. A-2018-3002437

Dear Secretary Chiavetta:

Enclosed 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.

Very truly yours,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: Office of Administrative Law Judge
Office of Special Assistants (e-mail only)
Bureau of Technical Utility Services (e-mail only)
Certificate of Service
*251987

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American Water :
Company. Pursuant to Sections 1102 and :
1329 of the Public Utility Code for Approval : Docket No. A-2018-3002437
of its Acquisition of the Wastewater System :
Assets of the Township of Sadsbury :

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 20th day of June 2018.

SERVICE BY E-MAIL and INTER-OFFICE MAIL

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pa 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL, POSTAGE PREPAID

Susan Simms Marsh, Esquire
Pennsylvania American Water Company
800 Hersheypark Drive
Hershey, PA 17033

Office of Small Business Advocate
300 North Street
Suite 202
Harrisburg, PA 17101

David P. Zambito, Esquire
Jonathan Nase, Esquire
George A. Bibikos, Esquire
Cozen O' Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

/s/ Christine Maloni Hoover

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Counsel for Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: June 20, 2018

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American :
Water Company. Pursuant to Sections 1102 :
and 1329 of the Public Utility Code for : Docket No. A-2018-3002437
Approval of its Acquisition of the Wastewater :
System Assets of the Township of Sadsbury :

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 June 1, 2018¹, Pennsylvania-American Water Company (PAWC or Company) seeks Commission approval for the acquisition of substantially all of the wastewater assets of Sadsbury Township (Township), Chester County, and the right of PAWC to provide wastewater service in Sadsbury Township, Chester County. PAWC also seeks approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code, as well as approval of the collection of a Distribution System Improvement Charge (DSIC) upon approval of the application, accrual of Allowance for Funds Used During Construction (AFUDC) for post-acquisition projects not recovered through the DSIC for book and ratemaking purposes, and deferral of depreciation related to post-acquisition improvements not recovered

¹ The Commission accepted the filing on June 19, 2018 by service of a Secretarial letter to the Applicant.

through the DSIC for book and ratemaking purposes. Application at 1. PAWC also requests the approval of the Asset Purchase Agreement (APA) with Sadsbury as well as other municipal agreements. Application at 2-5. Sadsbury provides wastewater service to approximately 950 residential and 48 commercial customer connections in Chester County. Application at 5. Of those, approximately 240 residential and 11 commercial accounts are not connected to public water, but instead obtain water from individual groundwater sources and private wells. PAWC St. 1 at 13.

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 Tanya J. McCloskey, 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 Christine Maloni Hoover, 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. 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 \$9,250,000 per the Asset Purchase Agreement of May 1, 2018. Appendix A-6. The original cost of the assets is \$7,480,601, and the original cost less depreciation is \$6,128,876. Appendix A-5; AUS Consultants Valuation Summary at 3.

7. According to PAWC witness Cox, the Sadsbury Utility Valuation Expert’s (UVE) appraisal conducted by Herbert, Rowland & Grubic, Inc. (HRG) was \$9,590,000 (PAWC St. 3 at 6), while the PAWC UVE’s appraisal conducted by Associated Utility Services, Inc. (AUS) was \$8,910,000. PAWC St. 4 at 19. The average of the fair market value appraisals is \$9,250,000. PAWC St. 3 at 6. The

valuation experts were paid \$22,564 to date for AUS and estimated total charges of \$26,638 plus expenses for HRG for the Fair Market Value Appraisals. Appendix A-8. PAWC estimates that it will incur transaction and closing costs of \$275,000 to \$450,000. Appendix A-12.

8. PAWC proposes to charge Sadsbury Township customers the current Sadsbury customer charge and wastewater consumption rates in effect at closing. Application at 10. PAWC testimony indicates that “[a]fter PAWC closes the Transaction, System customers will be subject to PAWC’s prevailing wastewater tariff on file with the Commission with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service.” PAWC St. 3 at 7.

9. 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.

10. The valuation information provided with the Application is not sufficient to determine whether PAWC’s ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation. In addition, PAWC states that it is not proposing a rate stabilization plan; however, it provides testimony in support of its “rate commitments.” Application at 6, footnote 2. The OCA will examine the proposal to determine whether it is a rate stabilization plan and whether it is adequately supported and reasonable or alternatively whether the rate commitments are reasonable.

11. PAWC would charge the following rates:

	All Customer Classes ²	
	<u>Service Charge per month</u>	<u>Usage Charge per 100 gallons</u>
Sadsbury Township	\$25.00	\$1.418

The OCA will examine the current rates and the proposed tariff.

12. Information is provided regarding the estimated costs of planned investment in the system. PAWC estimates that the capital costs for the 5-year capital plan for the Sadsbury system will be \$541,200. PAWC St. 2 at 6; PAWC Exh. MJG-2. The OCA will examine the information to determine what impact the capital improvements will have on the cost of service. The OCA will also examine the impact that the costs will have on the rates of existing and acquired customers.

13. The OCA submits that additional information is necessary to determine if the proposed rates, rate freeze, and PAWC's request for an approved rate base of \$9,250,000 for the Sadsbury acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

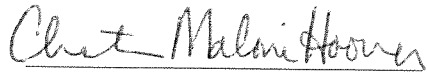
14. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit PAWC's existing customers.

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

²The charges shown are contained in the proposed tariff (Appendix A-13).

requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, regarding the Application.

Respectfully submitted,



Christine Maloni Hoover
Senior Assistant Consumer Advocate
Pa. Attorney No. 50026
CHoover@paoca.org

Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
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Harrisburg, PA 17101-1923
(717) 783-5048

Dated: June 20, 2018
251181

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 Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Pennsylvania-American Wastewater Company (PAWC or Company) of the Township of Sadsbury (Sadsbury) wastewater assets.

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC's current customers and the Sadsbury customers. The Acting 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 Acting Consumer Advocate will investigate the proposed acquisition 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 serves approximately 64,917 wastewater customers in Pennsylvania. Sadsbury serves approximately 998 customers in Sadsbury Township, Chester County.