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June 30, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Pennsylvania Public Utility Commission v. Pennsylvania-American Water
Company; Docket No. R-2017-2595853; C-2017-2606016**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply to New Matter of the Pennsylvania-American Water Large Users Group ("PAWLUG"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to the Pennsylvania-American Water Large Users Group

Enclosures

c: Administrative Law Dennis J. Buckley (via E-Mail and First-Class Mail)
Administrative Law Judge Benjamin J. Myers (via E-Mail and First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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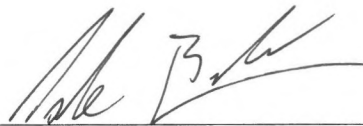
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Adeolu A. Bakare

Counsel to the Pennsylvania-American Water Large
Users Group

Dated this 30th day of June, 2017, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2017-2595853
	:	
Pennsylvania American Water Company	:	

REPLY TO NEW MATTER

TO ADMINISTRATIVE LAW JUDGES DENNIS J. BUCKLEY AND BENJAMIN J. MYERS:

Pursuant to Sections 5.61 and 5.62 of the Commission's Regulations, 52 Pa. Code §§ 5.61 & 5.62, the Pennsylvania-American Water Large Users Group ("Respondent" or "PAWLUG"), by its attorneys, hereby replies to a new matter raised in the Answer and New Matter of Pennsylvania-American Water Company ("PAWC") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") in the above-captioned docket on June 12, 2017, ("Answer"). In support thereof, PAWLUG avers as follows.

I. INTRODUCTION

1. On April 28, 2017, PAWC filed a request with the Commission to increase its base distribution water and wastewater revenues by \$107.9 million. On May 24, 2017, PAWLUG filed a Complaint ("Complaint") with the PUC, which was subsequently amended with an updated membership list on June 30, 2017.

2. On June 12, 2017, PAWC filed the above-referenced Answer to the Complaint against the rate case. In addition to responding to the issues raised in the Complaint, PAWC filed a New Matter requesting that the presiding Administrative Law Judges ("ALJs") deny PAWLUG's Complaint because the accompanying affidavit was executed by counsel. Accordingly, and consistent with the Sections 5.62 and 5.63 of the Commission's Regulations,

52 Pa. Code §§ 5.62 & 5.63, PAWC has raised a New Matter to which the PAWLUG is permitted to respond.

II. REPLY TO NEW MATTER

3. PAWC's New Matter requests that the ALJs dismiss PAWLUG's Complaint on grounds that the Complaint violates Section 1.36 of the Commission's Regulations, 52 Pa. Code § 1.36. PAWC contends solely that because "legal counsel would not be permitted to appear as a witness for, or testify on behalf of, the Complainant in order to verify or support factual averments in the Complaint, the affidavit submitted with the Complaint does not comply with 52 Pa. Code § 1.36." New Matter, p. 3. For the reasons set forth below, PAWC's New Matter lacks merit and should be rejected.

4. PAWC offers no basis for its contention that counsel for PAWLUG cannot be a witness in this proceeding. To the contrary, Rule 3.7 of the Pennsylvania Rules of Professional Conduct, Pa. R.P.C. 3.7, sets forth as follows:

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
 - (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.

PAWC's Answer fails to address the standards set forth in Rule 3.7 and should be categorically dismissed on such grounds alone. Moreover, the averments in PAWLUG's Complaint have no probative value in the rate case, and do not constitute evidence. *See* 52 Pa. Code § 5.61(d). Therefore, it is unlikely that PAWLUG's counsel would be considered a "necessary witness" in this proceeding. *See* Pa. R.P.C. 3.7. Accordingly, the allegations in PAWLUG's New Matter

should be dismissed as unsupported and contrary to the Pennsylvania Rules of Professional Conduct.

5. Further, as a practical matter, other parties have filed pleadings wherein affidavits and/or verifications have been executed by counsel. For instance, the Office of Small Business Advocate ("OSBA") filed a Complaint in this proceeding on May 10, 2017, with an accompanying Verification signed by counsel. Likewise, AK Steel Corporation filed a Petition to Intervene on June 1, 2017, attaching a Verification signed by outside counsel. PAWC did not oppose either pleading in those instances. As a result, PAWC's request for dismissal of PAWLUG's Complaint for attaching a similar Verification rings hollow.

6. Additionally, Rule 1.36 of the PUC's Regulations, 52 Pa. Code § 1.36, provides that "formal complaints... containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association." The term "employee" is not defined in the Commission's regulations and therefore should be interpreted broadly to include counsel employed by the party.

4. Finally, dismissal of PAWLUG's Complaint would not serve the public interest as PAWLUG has participated in more than 10 PAWC rate cases since 1992 and in each case has furthered the public interest by providing insight into the impacts of PAWC's rate filing upon large industrial customers within its service territory. As a result, and consistent with the Commission's policy of liberal construction, the PUC should grant any waivers and/or exceptions necessary to preserve PAWLUG's status as a party to this important proceeding. *See* 52 Pa. Code § 1.2.

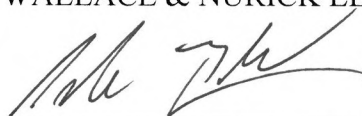
III. CONCLUSION

WHEREFORE, the Pennsylvania-American Water Large Users Group respectfully requests that the presiding Administrative Law Judges consider this Reply to New Matter and deny the relief requested in the New Matter filed by Pennsylvania-American Water Company on June 12, 2017.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



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Dated: June 30, 2017