



December 17, 2018

VIA ELECTRONIC SERVICE

**David P. Zambito**

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

**Re: In re: Application and related filings of Pennsylvania-American Water Company under Sections 507, 1102(a), and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 507, 1102(a), 1329, for approval of its acquisition of wastewater system assets of Exeter Township, related wastewater service rights, fair market valuation ratemaking treatment, deferral of the post-acquisition improvement costs, and certain contracts with municipal corporations; Docket Nos. A-2018-3004933 et al.**

**PENNSYLVANIA-AMERICAN WATER COMPANY'S ANSWER TO THE OFFICE OF CONSUMER ADVOCATE'S PETITION TO REJECT OR HOLD IN ABEYANCE ACCEPTANCE OF THE APPLICATION**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is Pennsylvania-American Water Company's ("PAWC's") Answer to the Office of Consumer Advocate's Petition ("Petition") to Reject or Hold in Abeyance Acceptance of the Application. **Please note that PAWC respectfully requests that the Commission issue a decision on the Petition on an expedited basis, in order to avoid any delays in the Bureau of Technical Utility Services' conditional acceptance of the Amended Application for filing.** Copies are being served as shown on the attached Certificate of Service.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

COZEN O'CONNOR

By  David P. Zambito

Counsel for *Pennsylvania-American Water Company*

DPZ:kmg  
Enclosure

cc: Per Certificate of Service  
Sean Donnelly, Bureau of Technical Utility Services  
Susan Simms Marsh, Esquire  
Chief Administrative Law Judge Charles E. Rainey, Jr.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :  
Company under Section 1102(a) of the Pennsylvania :  
Public Utility Code, 66 Pa C.S. § 1102(a), for :  
approval of (1) the transfer, by sale, of substantially :  
all of the Township of Exeter's assets, properties and :  
rights related to its wastewater collection and :  
treatment system to Pennsylvania-American Water :  
Company, and (2) the rights of Pennsylvania- :  
American Water Company to begin to offer or furnish :  
wastewater service to the public in portions of the :  
Township of Exeter, and in portions of Alsace and :  
Lower Alsace Townships, to one bulk service :  
interconnection point with Alsace Township, and to :  
four bulk service interconnection points with St. :  
Lawrence Borough, Berks County, Pennsylvania. :

Docket No. A-2018-3004933 *et al.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Pennsylvania-American Water Company's Answer to the Office of Consumer Advocate's Petition to Reject or Hold in Abeyance Acceptance of the Application** regarding its acquisition of the wastewater assets of Exeter Township, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA ELECTRONIC SERVICE**

Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17120

Office of Small Business Advocate  
Department of Community and  
Economic Development  
Commerce Building, Suite 202  
300 North Second Street  
Harrisburg, PA 17101-1303

Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

  
\_\_\_\_\_  
David P. Zambito, Esquire  
Counsel for *Pennsylvania-American Water Company*

Date: December 17, 2018

## VERIFICATION

I, Bernard J. Grundusky, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: December 17, 2018



Bernard J. Grundusky

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the Township of Exeter’s assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in portions of the Township of Exeter, and in portions of Alsace and Lower Alsace Townships, to one bulk service interconnection point with Alsace Township, and to four bulk service interconnection points with St. Lawrence Borough, Berks County, Pennsylvania.

Docket No. A-2018-3004933

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**PENNSYLVANIA-AMERICAN WATER COMPANY’S ANSWER  
TO THE OFFICE OF CONSUMER ADVOCATE’S PETITION TO REJECT OR  
HOLD IN ABEYANCE ACCEPTANCE OF THE APPLICATION**

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AND NOW COMES Pennsylvania-American Water Company (“PAWC”), by and through its attorneys, pursuant to 52 Pa. Code § 5.61, to file this Answer to the Office of Consumer Advocate’s Petition to Reject or Hold in Abeyance Acceptance of the Application (“Petition”), filed on December 14, 2018, in the above-referenced matter. PAWC respectfully requests that the Commission expeditiously deny the OCA’s Petition and permit the Bureau of Technical Utility Services (“TUS”) to complete its review of PAWC’s Application in order to determine if it is administratively complete and conditionally accepted for filing purposes. In support whereof, PAWC avers as follows:

## I. PROCEDURAL HISTORY

1. On September 25, 2018, PAWC filed the above-referenced application with the Pennsylvania Public Utility Commission (“Commission” or “PUC”). By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the Application was not accepted for filing purposes because it was incomplete, in the opinion of Commission staff.<sup>1</sup>

2. On October 11, 2018, the Commonwealth Court of Pennsylvania issued its decision in *McCloskey v. Pa. Pub. Util. Comm’n*, 1624 C.D. 2017 (October 11, 2018) (“*New Garden*”). The decision requires, *inter alia*, individualized customer notice in Section 1329 proceedings.

3. On December 5, 2018, PAWC filed an Amended Application with the Commission. The Amended Application is currently being reviewed by TUS for a determination of whether the filing is administratively complete and will be conditionally accepted for filing.<sup>2</sup>

## II. LEGAL STANDARDS

4. As the party seeking affirmative relief from the Commission, the OCA bears the burden of proof. 66 Pa. C.S. § 1329.

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<sup>1</sup> Exeter Township expects to intervene in this proceeding. Counsel for Exeter Township has represented to PAWC that Exeter Township supports this Answer.

<sup>2</sup> The Amended Application would be “conditionally accepted” because PAWC has proposed, in compliance with *New Garden*, an individualized customer notice process in which it would provide notice to its existing wastewater and water customers via bill inserts over a 30-day billing cycle. Exeter Township would provide individualized customer notice via direct mail to its existing customers during that time period. Upon completion of the individualized customer notice process, PAWC would file a verified statement regarding completion of the notice process. At that time, the Commission would formally accept the Amended Application for filing and the six-month time period for a Section 1329 proceeding would commence.



### III. THE OCA PETITION SHOULD BE DENIED ON AN EXPEDITED BASIS

5. The Petition asks the PUC to “reject the application, or hold in abeyance the acceptance of the Application, to permit the parties and the Commission to resolve the issues regarding the content of a notice to customers that will satisfy the requirements” of *New Garden*.

6. The relief requested by the OCA is unsupported, would cause customer confusion, and is not required by *New Garden*. It should be denied on an expedited basis.

7. The Amended Application is currently being reviewed by TUS for administrative completeness, to determine whether it will be accepted for conditionally filing purposes. The Amended Application contains a description of the individualized customer notice process intended to be used by PAWC and Exeter Township, together with copies of the proposed consumer notices. Therefore, the Amended Application should not be rejected as administratively incomplete. If the proposed consumer notices are unacceptable, the proper remedy is for TUS to state that fact in its deficiency letter to PAWC so PAWC may address the deficiency and have the Application accepted for filing purposes within the ten-day deadline for TUS to complete its review.<sup>3</sup> *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

8. In the alternative, the OCA essentially asks that the instant proceedings be stayed indefinitely, until the parties “resolve the content of a notice to customers.” The OCA does not state how the parties will “resolve the content of a notice to customers,” or what will happen to PAWC’s Amended Application if the parties are unable to negotiate a customer notice that is acceptable to everyone.

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<sup>3</sup> TUS issued its initial (and presumably only) deficiency letter on December 12, 2018 and did not identify any deficiency with the proposed customer notice process and *pro forma* notices.

9. The OCA has not established grounds for a stay. In granting a stay, the Commission follows the decision in *Pa. Pub. Util. Comm'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983). Accordingly, a stay will be granted if:

- a. The petitioner makes a strong showing that he is likely to prevail on the merits;
- b. The petitioner has shown that without the requested relief, he will suffer irreparable injury;
- c. The issuance of a stay will not substantially harm other interested parties in the proceedings; and
- d. The issuance of a stay will not adversely affect the public interest.

The OCA must satisfy all four prongs of this test. The OCA, however, has failed to demonstrate that it satisfies any element of this test.

10. The OCA has not made a strong showing that it is likely to prevail on the merits:

a. The OCA states that it is concerned that the proposed notices do not adequately inform the customers of the impact of the filing on their rates or bills, the PUC's role, and the options that customers have in response to the notice. Petition p. 3.

b. The rate impact of the acquisition is unknowable at the application stage and, indeed, rates are not being set at the application stage. The PUC will determine rates in a future base rate proceeding, in which the Commission will have many tools at its disposal (establishing separate rate zones, gradualism, combining wastewater and water revenue requirements, etc.). As a result, requiring the notices to include information about potential rate increases (in either real dollars or percentages) is misleading and will *cause* customer confusion rather than *alleviating* customer confusion. While OCA hypothesizes that the rate impact of the proposed acquisition could be as high as 16-22%, it certainly could be less – even as low as 0%. It is simply unknowable at this time what rates the Commission may set in a future base rate proceeding. The only ratemaking issue in a Section 1329 is the setting of a fair market value rate

base for the acquired system. The proposed notices would inform customers of this limited rate impact – *i.e.*, the proposal to include an additional \$96 million in rate base.<sup>4</sup>

c. PAWC’s proposed customer notices sufficiently describe the PUC’s role in reviewing and approving an application. The OCA suggests adding more verbiage to the notice, Appendix E, but the notice already makes the salient points. PAWC submits that there is no material difference between its draft and the OCA’s draft – certainly no difference that rises to the level of constitutional significance.

d. PAWC’s proposed customer notices sufficiently describe the customer’s options in response to the notice. The OCA complains that PAWC’s notice does not include contact information for the OCA, but the Commission’s regulation at 52 Pa. Code § 53.45 does not require this information to be included in a customer notice of a proposed rate increase. Additionally, the OCA is only one potential party. It should not be singled out for special treatment.

e. The PUC is the administrative agency with the expertise to know best what should be required in the consumer notice. In this regard, PAWC notes that it worked with the Law Bureau and TUS staff in developing the proposed notices.<sup>5</sup>

f. Finally, the proposed customer notices are only one source of information for interested customers. The customer notices advise customers of other sources of information,

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<sup>4</sup> OCA asserts on page 4 of its Petition that *New Garden*, citing the notice provisions of 52 Pa. Code § 53.45(b)(1)(i), requires notice that provides specific information regarding the rate impact on customer classes. PAWC’s proposed customer notices clearly satisfy this requirement. The only rate issue being decided in this Section 1329 application proceeding is the fair market value rate base for the acquired system – nothing more. PAWC’s proposed notices specifically state the proposed rate base addition of \$96 million. As made clear by the proposed notices, actual rates will not be decided in this case. Along these lines, PAWC further notes that 52 Pa. Code § 53.45(b)(1)(i) is not directly applicable to Section 1329 proceedings – despite being cited in *New Garden* as the expected type of notice. Section 53.45(b)(1)(i) specifically addresses tariff changes proposing base rate increases. The only tariff changes proposed as part of the instant Amended Application is the incorporation of the Exeter Township service territory and existing rates. No base rate increases are being proposed by tariff supplement to either PAWC’s existing customers or the to-be-acquired customers.

<sup>5</sup> PAWC also – in good faith – attempted to work with OCA on a mutually-acceptable notice but was unsuccessful.



including the Commission's website and company offices. Interested customers could easily obtain additional and more-detailed information if they so desire.

11. The OCA has failed to show that, without the requested relief, consumers will suffer irreparable injury. The only alleged harm is "potential confusion if the PAWC and Exeter Township notices are provided to customers and are later found to be defective and inconsistent with *New Garden*." Petition p. 2. First, it is completely speculative that the notices proposed by PAWC and Exeter Township will be found defective. Second, in the unlikely event that those notices are found to be defective, the remedy is simple – issue new notices to customers.

12. The OCA has failed to show that issuance of a stay will not substantially harm other interested parties in the proceedings. To the contrary, the issuance of the stay will substantially harm the interests of PAWC and Exeter Township. These parties have a statutory right to file a Section 1329 Application, and that statute requires the Commission to decide a Section 1329 Application within six months. Granting the OCA's Petition would substantially harm the applicants in this proceeding. The applicants have entered into a legally-binding asset purchase agreement in reliance upon that statutory requirement.

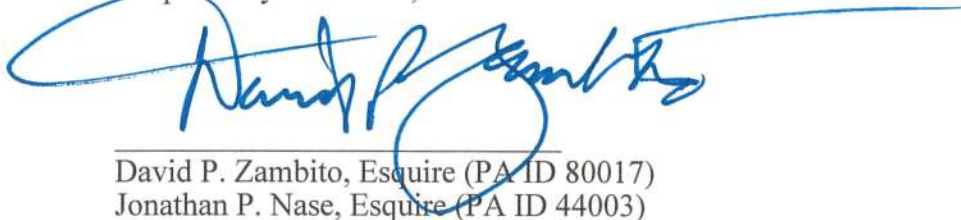
13. The OCA has failed to show that issuance of the stay will not adversely affect the public interest. If the Commission would agree with the OCA, there would be no basis for the Commission to accept and process *any* Section 1329 application; the same concerns about customer notice would warrant a rejection or stay of all applications. This would harm the public interest because Section 1329 Applications serve important public policy goals, such as allowing municipalities to monetize their assets for their true economic value. The Commission should not allow the OCA to prevent all Section 1329 proceedings from moving forward for an indefinite period of time.

14. The Commission should decide this matter expeditiously, so that TUS is not delayed in issuing a Secretarial Letter conditionally accepting the instant Application and permitting the Amended Application to move forward. The OCA has adequate means of pursuing relief after TUS finds the Application is complete and accepts it for filing.

#### IV. CONCLUSION

For the foregoing reasons, the Commission should, on an expedited basis, deny the OCA's Petition and permit the Bureau of Technical Utility Services to complete its review of PAWC's Amended Application in order to determine if it is administratively complete and conditionally accepted for filing purposes. Once accepted for filing, the Amended Application should be permitted to progress along a normal litigation path -- resulting in a Commission final order on its merits.

Respectfully submitted,



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Dated: December 17, 2018