



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 20, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Pennsylvania-American Water Company Pursuant to Sections 507,
1102, and 1329 of the Public Utility Code for Approval of its Acquisition of the
Wastewater System Assets of Exeter Township
Docket No. A-2018-3004933

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's
(I&E) **Motion to Reject or Hold in Abeyance Pennsylvania-American Water
Company's Amended Application** for the above-captioned proceeding.

Copies are being served on all active parties of record per the attached Certificate
of Service. If you have any questions, please contact me at (717) 783-6170.

Sincerely,

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 320526

ELM/jfm
Enclosure

cc: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. A-2018-3004933
 :
 Application of Pennsylvania-American :
 Water Company Pursuant to Sections 507, :
 1102, and 1329 of the Public Utility Code :
 for Approval of its Acquisition of the :
 Wastewater System Assets of Exeter :
 Township :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Motion** dated December 20, 2018,
in the manner and upon the persons listed below, in accordance with the requirements of
52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

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Served via Electronic Mail Only

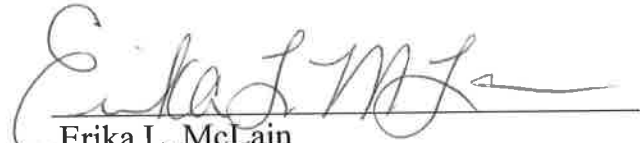
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Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 320526

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	
Water Company Pursuant to	:	
Sections 507, 1102, and 1329 of the	:	Docket No. A-2018-3004933
Public Utility Code for Approval of its	:	
Acquisition of the Wastewater System	:	
Assets of Exeter Township	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§5.61 and 5.103, you are hereby notified that the Bureau of Investigation and Enforcement has filed a Motion to Reject or Hold in Abeyance at the above-referenced docket to which you may file an answer within twenty (20) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code, the Public Utility Commission, or by the Presiding Officer. Your failure to answer will allow the Public Utility Commission or Presiding Officer to rule on the Motion without a response from you, thereby requiring no other proof. All pleadings such as a reply to this document must be filed with the Secretary of the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the undersigned prosecutor for the Bureau of Investigation and Enforcement.


Erika L. McLain
Attorney I.D. # 320526

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 783-6170

Dated: December 20, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	
Water Company Pursuant to	:	
Sections 507, 1102, and 1329 of the	:	Docket No. A-2018-3004933
Public Utility Code for Approval of its	:	
Acquisition of the Wastewater System	:	
Assets of Exeter Township	:	

**MOTION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT TO
REJECT OR HOLD IN ABEYANCE PENNSYLVANIA-AMERICAN WATER
COMPANY’S AMENDED APPLICATION**

NOW COMES the Bureau of Investigation and Enforcement (“I&E), by and through its prosecutor, Erika L. McLain, and hereby requests that the above captioned application of Pennsylvania-American Water Company (“PAWC” or “Company”) be rejected as deficient or otherwise held in abeyance pending a Pennsylvania Public Utility Commission (“PUC” or “Commission”) ruling on Exeter Township’s Application for a certificate of public convenience. Additionally, I&E opposes PAWC’s intent to consolidate the Section 1329 proceeding with Exeter Township’s Application for certificate of public convenience. Accordingly, in support of this Motion, I&E avers the following:

1. PAWC filed its original Application on September 25, 2018 pursuant to 66 Pa. C.S. §507, §1102 and §1329. The Application requested that the Commission approve the transfer, by sale, of substantially all Exeter Township’s assets, properties and rights related to its wastewater system.

2. On October 1, 2018, by Secretarial Letter, the Pennsylvania Public Utility Commission declined to accept the filing due to incompleteness based on three major deficiencies.¹ One particular deficiency for rejection was that Exeter Township appeared to be providing “substantial” unlawful de facto public service to customers beyond its corporate limits so it may lack the authority to abandon and then transfer the assets and customers to the Company.² The letter indicated that PAWC and Exeter Township were free to make the corrective filings to address the deficiencies and resubmit the application in the future.³

3. On December 5, 2018, PAWC filed an Amended Application in an attempt to address the concerns raised in the Secretarial Letter.⁴

4. The deficiencies raised by the Secretarial Letter were not cured between the October 1, 2018 Secretarial Letter and the December 5, 2018 Amended Application filing.

5. PAWC noted in its Amended Application Cover Letter that Exeter Township intended to file for a certificate of public convenience to serve the customers outside its corporate limits and that it intends to consolidate the proceedings.⁵ I&E learned that Exeter Township filed its Application for a certificate of public convenience on December 10, 2018 despite the fact I&E was not included on Exeter Township’s service

¹ Secretarial Letter dated October 1, 2018 at Docket No. A-2018-3004933.

² *Id.*

³ *Id.*

⁴ Amended Application filed December 5, 2018 at Docket No. A-2018-3004933.

⁵ Amended Application Cover Letter dated December 5, 2018 at Docket No. A-2018-3004933.

list.⁶ Exeter Township's filing is deficient in several other ways. Exeter Township's Application for a certificate of public convenience is missing among other things: a pro forma initial tariff, evidence of notice to affected customers, and evidence of compliance with county comprehensive plans and township ordinances.⁷ Additionally, Exeter intends to increase rates significantly prior to closing the Section 1329 transaction without adhering to applicable statutes and PUC regulations governing rate increase filings.⁸

6. Although Exeter Township filed for a certificate of public convenience, this filing does not cure the deficiencies raised in the Secretarial Letter rejecting the initial application. Unless and until the Commission issues a certificate of public convenience to Exeter, PAWC is unable to acquire those customers Exeter Township is unlawfully serving.

7. Rejecting this application or holding it in abeyance is necessary to avoid potential harm and confusion because, until the Commission makes a ruling as to whether Exeter Township is entitled to a certificate of public convenience it is impossible to accurately determine the service territory and assets PAWC can reasonably include in its 1329 application. This could impact the Fair Market Value analysis required under Section 1329.

⁶ Application of Exeter Township for Certificate of Public Convenience filed December 10, 2018 at Docket No. A-2018-3006505.

⁷ 52 Pa. Code §3.501.

⁸ 66 Pa. C.S. §1308 and 52 Pa. Code §53.51-§53.56.

8. The Commission has the authority to hold a proceeding in abeyance or grant a stay when the petitioner makes a strong showing that he is likely to prevail on the merits, has shown that without the requested relief he will suffer irreparable injury, the issuance of a stay will not substantially harm other interested parties in the proceedings, and the issuance of a stay will not adversely affect the public interest.⁹

a. I&E is likely to prevail on the merits of this filing as the Commission has already indicated that it believes Exeter Township to be “providing substantial unlawful de facto public utility service beyond its corporate limits.”¹⁰ Exeter Township has not denied this allegation. Further PAWC has premised its Section 1329 Application on the fact that the Commission will grant Exeter a certificate of public convenience because, otherwise, PAWC would be unable to acquire all customers included within its Section 1329 Application.

b. Without the requested relief, I&E, the other Parties to this proceeding, the ratepayers, and the Commission will suffer irreparable harm as there are many concerns related to Exeter Township’s application for a certificate of public convenience that must be addressed before PAWC can be allowed to acquire this system. One major concern is Exeter Township’s intent to increase rates in February 2019, from the current residential quarterly service charge of \$26.65 to \$31.80¹¹ and a residential minimum consumption

⁹ *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 267 A.2d 805. (Pa. 1983).

¹⁰ Secretarial Letter dated October 1, 2018 at Docket No. A-2018-3004933.

¹¹ Application of Exeter Township for Certificate of Public Convenience, Exhibit C and Exhibit D at Docket No. A-2018-3006505.

charge of \$36.34 to \$46.90¹², as a de facto public utility bound by the Commission's rules and regulations, without Commission permission.¹³

c. The other Parties to this proceeding will not be harmed by the Commission granting a stay of this 1329 proceeding pending the outcome of Exeter Township's Application for a certificate of public convenience. In fact, the Parties, including PAWC and Exeter Township will be benefitted because without the certificate of public convenience, Exeter Township cannot convey to PAWC those customers it cannot lawfully serve.

9. The issuance of a stay of PAWC's 1329 proceeding will not in any way harm the public interest. In fact, it would be a benefit to all Parties involved in this proceeding as well as a benefit to the ratepayers who will ultimately be impacted by this 1329 proceeding. The crux of a 1329 proceeding is the determination of the Fair Market Value of the assets being acquired which determines the amount that will be added to rate base for that system in a company's next base rate case filing. This is of utmost importance to ratepayers as they ultimately are responsible for paying for these transactions. As noted above, the Commission's determination of whether Exeter Township should be granted a certificate of public convenience has a potential impact on what the Fair Market Value should be in this transaction because Exeter Township cannot convey those customers and assets which it cannot lawfully serve.

¹² *Id.*

¹³ The Commission issued an Order concluding that a de facto utility is subject to the requirements of the Public Utility Code and the PUC's regulations. *Popowsky v. Pa. Public Utility Commission*, 166 Pa. Cmwlth. 690.

10. PAWC and Exeter Township's intent to consolidate these two proceedings is improper. For the reasons mentioned above, the determination as to whether Exeter Township qualifies as a public utility may be a lengthy process. Under Section 1102 of the Public Utility Code, a public utility may not offer, render, furnish, or supply service in Pennsylvania without prior approval of its application for a certificate of public convenience by the Commission.¹⁴ To obtain a certificate of public convenience, an applicant must qualify as a public utility under Public Utility Code Section 102.¹⁵ The Commission must review Exeter Township's fitness to operate as a certificated utility and determine whether there are viable alternatives to granting a certificate of public convenience. It is unfairly prejudicial to consolidate both complicated proceedings, one of which must adhere to a six-month statutory deadline.

11. PAWC's Section 1329 Application appears to be premised on the fact that the Commission will grant Exeter Township a certificate of public convenience. However, for Exeter Township to receive a certificate of public convenience, the deficiencies in its Application must be cured and the Commission must be given the opportunity to thoroughly review the issues that arise as a result of Exeter Township acting as a de facto public utility with no Commission approved tariff in place. To encumber this process with the strict six-month statutory deadline required in Section 1329 proceedings would be inappropriate.

¹⁴ 66 Pa. C.S. § 1101.

¹⁵ 66 Pa. C.S. § 102, *see also* 66 Pa. C.S. § 1101. Section 1101, titled "Organization of public utilities and beginning of service," establishes that only proposed public utility submitting an application for certificate of public convenience that is approved by the Commission can offer, render, furnish, or supply service within the Commonwealth. *See* 66 Pa. C.S. § 1101.

12. For the reasons stated above, it is imperative that Exeter Township's certificate of public convenience filing must be resolved prior to the transfer of its wastewater assets because without it PAWC cannot gain ownership of all assets contained in its Section 1329 filing.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that PAWC's Amended Application be rejected as deficient or, in the alternative, held in abeyance until the Commission has made a determination on Exeter Township's Application for a certificate of public convenience.

Respectfully submitted,



Erika L. McLain

Prosecutor

Attorney I.D. # 320526

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 783-6170

Dated: December 20, 2018