



January 16, 2019

David P. Zambito

VIA ELECTRONIC SERVICE

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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 FOR STAY

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Pennsylvania-American Water Company's Answer to the Office of Consumer Advocate's Petition for Stay. 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: Chairman Gladys Brown
Vice Chairman David W. Sweet
Commissioner John F. Coleman
Commissioner Norman J. Kennard
Commissioner Andrew G. Place
Shaun Sparks, Esq., Law Bureau

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

**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 for Stay**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

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

Date: January 16, 2019

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: 1-16-19



Bernard J. Grundusky
Senior Director, Business Development
Pennsylvania American Water Company

**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

**PENNSYLVANIA-AMERICAN WATER COMPANY’S ANSWER
TO THE OFFICE OF CONSUMER ADVOCATE’S PETITION FOR STAY**

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 for Stay (“Petition for Stay”), filed on January 14, 2019, in the above-referenced matter. PAWC respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) expeditiously deny the OCA’s Petition for Stay. In support whereof, PAWC avers as follows:

I. INTRODUCTION

PAWC urges the Commission to expeditiously deny the Petition for Stay. It is largely duplicative of the “Petition to Reject or Hold in Abeyance Acceptance of the Application”

(“OCA’s Petition to Hold in Abeyance”) filed by OCA, and which PAWC previously argued requests a stay of this proceeding. *See* PAWC’s Answer to the OCA’s Petition to Hold in Abeyance. In fact, the two filings could be resolved in a single decision because the facts, legal standards, legal analysis and conclusions are identical.

As already noted by PAWC, OCA failed to satisfy the four prongs of the test for a stay set forth in *Pa. Pub. Util. Comm’n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983). The OCA has taken a “second bite at the apple” but has again failed to satisfy the test for a stay. The Commission should deny the OCA’s Petition for Stay and allow this case to move forward.

II. BACKGROUND

1. It is admitted that, on September 25, 2018, PAWC filed the above-referenced application with the Commission. It is further admitted that, 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.

In addition, it is admitted that, on December 5, 2018, PAWC filed an Amended Application with the Commission. The Amended Application is a written document that speaks for itself. It is further admitted that, on December 10, 2018, Exeter Township filed an application for a certificate of public convenience *nunc pro tunc* (“Exeter’s Application”). This application was docketed at Docket No. A-2018-3006505. Exeter Township’s application is a written document that speaks for itself.

2. It is admitted that, on December 14, 2018, the Office of Consumer Advocate filed a “Petition to Reject or Hold in Abeyance Acceptance of the Application” (“OCA’s Petition to Hold in Abeyance”) alleging that PAWC’s proposed customer notice does not satisfy the

requirements of *McCloskey v. Pa. Pub. Util. Comm'n*, 1624 CD 2018 (Cmwlth. Ct. October 11, 2018) (“*New Garden*”). OCA’s Petition to Hold in Abeyance asked the Commission to reject the Amended Application or hold it in abeyance “to permit the parties and the Commission to resolve the conflicting positions regarding the proper notices to be sent to the existing PAWC customers and to the Exeter Township customers.” OCA’s Petition to Hold in Abeyance, p. 7.

By way of further answer, on December 17, 2018, PAWC filed an Answer to OCA’s Petition to Hold in Abeyance. To the extent that the OCA asked the Commission to hold the instant Application in abeyance, PAWC argued that the OCA’s Petition to Hold in Abeyance was a Petition for Stay. PAWC further argued that the OCA’s Petition to Hold in Abeyance failed to meet the standard for granting a stay, and therefore should be denied. OCA’s Petition to Hold in Abeyance remains pending before the Commission.

3. The Amended Application was reviewed by the Bureau of Technical Utility Services (“TUS”) to determine whether the filing was administratively complete. It is admitted that, on December 19, 2018, the Commission issued a Secretarial Letter (“December 2018 Secretarial Letter”) stating that the Amended Application had been conditionally accepted for filing. The Secretarial Letter further directed PAWC to:

- provide individualized notice of the proposed acquisition to all potentially affected PAWC wastewater and water division customers;
- ensure that concurrent notice would be given to all current Exeter customers; and
- publish newspaper notice of the Section 1329 Application.

The Secretarial Letter required PAWC to notify the Commission when PAWC complied with the above-described notice requirements. Upon receipt of a verification indicating that notice has been given as required by the Secretarial Letter, the Commission will issue a Secretarial Letter finalizing acceptance of the filing. December 2018 Secretarial Letter, p. 1.

By way of further answer, OCA's Petition fails to note that, on December 20, 2018, the Bureau of Investigation and Enforcement ("I&E") filed a "Motion to Reject or Hold in Abeyance Pennsylvania-American Water Company's Amended Application" ("I&E's Motion to Hold in Abeyance"). I&E asked the Commission to reject PAWC's Application, or hold it in abeyance, until the Commission enters an order on Exeter's Application.

On December 26, 2018, PAWC filed an Answer opposing I&E's Motion to Hold in Abeyance. PAWC's Answer argued that the motion was procedurally improper and substantively without merit. On January 7, 2019, Exeter Township filed an answer opposing I&E's Motion to Hold in Abeyance. Exeter Township filed a corrected answer on January 9, 2019. I&E's Motion to Hold in Abeyance remains pending before the Commission.

Other procedural developments that the OCA neglected to mention include the following: on December 28, 2018, Exeter Township filed a Petition to Intervene in the instant proceeding; on January 7, 2019, the Borough of St. Lawrence, Berks County, Pennsylvania, filed a Petition to Intervene; and, on January 14, 2019, the Borough of St. Lawrence filed a "Response of Intervenor, Borough of St. Lawrence to Application for Certificate of Public Convenience and Application for Approval of Transfer" at both this docket number and A-2018-3006505 (the docket number for Exeter's Application).

4. It is admitted that the OCA filed its Protest and Public Statement in this matter on January 14, 2019. Those filings are written documents that speak for themselves.

III. THE OCA FAILED TO SATISFY THE CRITERIA FOR OBTAINING A STAY

5. As the party seeking affirmative relief from the Commission, the OCA bears the burden of proof. 66 Pa. C.S. § 1329. In granting a stay, the Commission follows the decision in *Process Gas Consumers Group, supra*. 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.

In its Answer to the OCA's Petition to Hold in Abeyance, PAWC demonstrated that the OCA failed to establish any of the criteria necessary for granting a stay. In this duplicative filing, the OCA still has not established any of the criteria necessary for granting a stay.

A. The OCA is Unlikely to Prevail on the Merits

PAWC and Exeter will each provide notice to their customers of the Application. PAWC's Application included a form of the notice that PAWC and Exeter will provide to customers. The OCA contends "The notices provided with the Application do not meet the fundamental requirements of [52 Pa. Code § 53.45(b)(1)-(4)] or *New Garden*." OCA Petition p. 5. The OCA, however, does not explain the alleged deficiencies in the notice.

In its Petition to Hold in Abeyance, the OCA stated that it was 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 to Hold in Abeyance, p. 3. PAWC responded to these concerns in its Answer to the OCA's Petition to Hold in Abeyance:

b. The rate impact of the acquisition is unknowable at the application stage, and, indeed, rates are not being set at the acquisition 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 proceeding 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.

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.

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

PAWC’s Answer to the OCA’s Petition to Hold in Abeyance, pp. 4-6 (notes omitted). For these reasons, PAWC respectfully submits that the OCA is not likely to prevail on the merits. Consequently, the Commission should deny its request for a stay.

Further, as discussed below, the OCA has failed to establish that it meets any of the other criteria for a stay. Consequently, the Commission should reject the OCA’s plea that the Commission give it “the benefit of the doubt” pursuant to *Petition of the Borough of Cornwall for*

a Declaratory Order that the Provision of Water Service to Isolated Customers Adjoining its Boundaries Does Not Constitute Provision of Public Utility Service Under 66 Pa. C.S. § 102, Docket No. P-2015-2476211 (Opinion and Order entered December 8, 2016).

B. The OCA has Failed to Establish that Customers Will Suffer Irreparable Injury If the Stay is Not Granted

The OCA has failed to show that, without the requested relief, consumers will suffer *irreparable* injury. First, the OCA assumes that the notices are constitutionally inadequate. This is completely speculative. More importantly, in the event that a court determines that the notices are constitutionally inadequate, the result would be the same here as in the *New Garden* case itself – the case would be remanded to the Commission so that constitutionally adequate notice may be given to ratepayers and the Commission can issue an appropriate order after receiving evidence from ratepayers. As argued at page 6 of PAWC’s Answer to the OCA’s Petition to Hold in Abeyance, “in the unlikely event that those notices are found to be defective, the remedy is simple – issue new notices to customers.”

C. The OCA Overlooks the Fact that Issuing a Stay will Substantially Harm the Interests of PAWC and Exeter Township

The issuance of a stay will substantially harm the interests of PAWC and Exeter Township. Those 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. The applicants have entered into a legally-binding asset purchase agreement in reliance upon that statutory requirement. Granting the OCA’s Petition would substantially harm the applicants in this proceeding.

It is significant to note, in this regard, that the OCA’s Petition for Stay is vague as to the duration of the requested stay; it requests a stay “until the notices are revised to reflect the directive

of *New Garden* and 52 Pa. Code § 53.45.” The parties obviously disagree as to whether the notices in fact reflect the directive of *New Garden*. The OCA does not indicate how that disagreement is to be resolved, let alone when that will occur.

The OCA alleges “There is no evidence that maintaining the status quo would result in any harm to the parties or to the customers of PAWC and Exeter Township.” Petition for Stay, p. 6. Of course there is no evidence regarding harm to the parties – the Application has not even been accepted yet. There is no evidence at all in this proceeding. In any event, the OCA has the burden of proof, and has failed to demonstrate that issuing a stay will not substantially harm the interests of PAWC and Exeter.

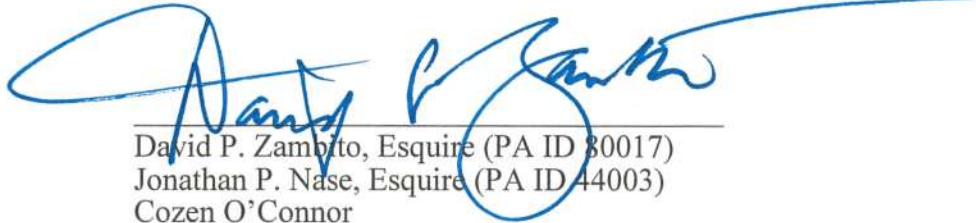
D. The OCA Fails to Recognize that Issuance of a Stay will Adversely Affect the Public Interest

If the Commission would agree with the OCA that the instant application should be stayed, 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.

IV. CONCLUSION

For the foregoing reasons, the Commission should expeditiously deny the OCA's Petition for Stay and permit this case to move forward.

Respectfully submitted,



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Dated: January 16, 2019