

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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January 24, 2019

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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 Water Assets of
the Steelton Borough Authority
Docket No. A-2019-3006880

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Petition for
Appeal of Staff Action and/or a Determination of Finality in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Erin L. Gannon".

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachment

cc: Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Bureau of Technical Utility Services (email only)
Shaun Sparks, Esquire, Law Bureau
Certificate of Service

*265489

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania- :
American Water Co. Pursuant to Sections :
507, 1102, and 1329 of the Public Utility : Docket No. A-2019-3006880
Code for Approval of its Acquisition of the :
Water Assets of Steelton Borough Authority :

OFFICE OF CONSUMER ADVOCATE'S
PETITION FOR APPEAL OF STAFF ACTION
AND/OR A DETERMINATION OF FINALITY

I. RELIEF REQUESTED

Pursuant to Section 5.44 of the Commission's regulations, 52 Pa. Code § 5.44, the Office of Consumer Advocate (OCA) files this Petition seeking, **first**, Appeal from the Secretarial Letter issued January 17, 2019, in the above-captioned proceeding. The Secretarial Letter accepted, *inter alia*, a customer notice that will be sent by Pennsylvania American Water Company (PAWC or Company) and Steelton Borough Authority (Steelton) to their customers regarding PAWC's Application under Sections 507, 1102 and 1329 of the Public Utility Code. 66 Pa. C.S. §§ 507, 1102, 1329. The OCA requests that the Commission reverse the Secretarial Letter, reject the customer notices attached to PAWC's Application and require notices that are consistent with 52 Pa. Code § 53.45 and the Commonwealth Court's Order in McCloskey v. Pa. Public Utility Commission, 1624 C.D. 2017 (Oct. 11, 2018) (New Garden).

Second, pursuant to Section 5.44 of the Commission's regulations, 52 Pa. Code § 5.44, and Pennsylvania Rule of Appellate Procedure 341(c), the OCA requests the Commission to make an express determination that the Secretarial Letter is a final order with regard to customer notice, so that appeal of the notice issue may be taken immediately.

The OCA files this Petition seeking two forms of relief in order to exercise its right to seek appellate review of the customer notice issue, if necessary. If the Commission determines that the January 17, 2019 Secretarial Letter is a final action on the sufficiency of the customer notice, then the Commission has 30 days to enter a determination of finality under Rule 341(c).¹ The OCA notes that during the time an application for a determination of finality is pending the action is stayed. Pa. R.A.P. 341(c)(2). In that case, the Commission does not need to address the OCA's request for appeal from staff action under Section 5.44.

If the Commission determines that the Secretarial Letter is not a final action on the merits of the customer notice issue, then the Commission should enter an Order disposing of the issue on the merits, which includes an express determination of finality. In that case, the Commission does not need to address the OCA's request for a determination that the January 17, 2019 Secretarial Letter is final.

The OCA respectfully requests **expedited** treatment of this Petition, so that the Commission may consider it at its Public Meeting scheduled for February 7, 2019. That is the only Public Meeting scheduled before February 19, 2019, which is the deadline for Commission action under Pa. R.A.P. 341(c).

¹ Pa. R.A.P. 341(c)(3) provides:

Unless the trial court or other government unit acts on the application within 30 days of entry of the order, the trial court or other government unit shall no longer consider the application and it shall be deemed denied.

II. BASIS FOR RELIEF REQUESTED

1. In McCloskey v. Pa. Public Utility Commission, 1624 CD 2017 (Oct. 11, 2018) (New Garden), the Commonwealth Court held that to meet due process requirements, individualized notice must be provided directly to all ratepayers and ratepayers must be afforded an opportunity to participate in a Section 1329 proceeding. New Garden, slip op. at 26. Notice is required because the ratemaking rate base determination made in the proceeding “is fundamental to a determination of rates” and a rate increase involves a substantial property right. Id. The Commonwealth Court directed the Commission to provide notice to all ratepayers in accordance with 52 Pa. Code § 53.45. Id. Section 53.45 of the Commission’s regulations addresses notice that is required in a rate case. It requires notice to be given to the public by posting in each company office, by written or printed notice, or alternatively by bill insert as part of the monthly billing cycle, and by news release. See 52 Pa. Code 53.45(b)(1-4). The regulation contains explicit language for the notice that the utility sends to its customers.

2. On January 2, 2019, PAWC filed an Application seeking approval of its proposed acquisition of the water assets of the Steelton Borough Authority. Application Filing Checklist # 18 asks the Applicant to provide a copy of the notification sent to affected customers describing the filing and the proposed rates. In its response, PAWC attached a notice that it said it will send to its customers and a notice that will be sent by Steelton to its customers. Application, Appendix A-18-d.

3. On January 17, 2018, Secretary Rosemary Chiavetta issued a Secretarial Letter informing PAWC that it had conditionally accepted the Application for filing and directing PAWC to provide individualized notice of the proposed acquisition to all potentially affected PAWC water division customers and ensure concurrent notice to all current Steelton customers

in similar fashion. Upon receipt of verification that notice has occurred as directed, the Secretary stated that the Commission will issue a Secretarial Letter finalizing acceptance of the filing.

4. As discussed in the following paragraph, the OCA 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 as required by 52 Pa. Code § 53.45. If the PAWC and Steelton notices are provided to customers and are later found to be defective and inconsistent with Section 53.45 and New Garden, it will be necessary to provide revised notice to ratepayers, take additional evidence from ratepayers regarding the acquisition and enter a new order, as was directed by the Commonwealth Court in New Garden as a result of inadequate notice. This would complicate and delay resolution of the Application proceeding. The OCA seeks to avoid this by filing its Petition seeking, first, appeal of staff action.

5. The basis for the OCA's appeal of staff action is that the notice provided with PAWC's Application does not meet the fundamental requirements of Section 53.45(b)(1-4) and the New Garden Order. The OCA also submits that there are inconsistencies between the proposed notices and the "Milesburg notice" accepted by the Commission following the Commonwealth Court's Order in Barasch v. Pennsylvania Public Utility Commission, 546 A.2d 1296 (Pa. Cmwlth. 1988) (Milesburg). See South River Partners v. West Penn Power Co., Docket No. C-00935287, Appendix A of the Fifth Interim Order of Administrative Law Judge Nemec (Attachment A, hereto).

a. The notice used in rate cases, as well as the "Milesburg notice," provides specific information about the impact of the proposed action on each customer class by showing

the impact on a residential, commercial, and industrial customer's bill.² 52 Pa. Code § 53.45(b)(1)(i). The notices attached to PAWC's Application do not provide any information regarding the impact of the requested \$22.5 million ratemaking rate base on the customers' bills. See Application, Appendix A-18-d. The OCA submits that, at a minimum, the notices should provide the impact on revenue requirement depending on whether the revenue requirement increase related to the ratemaking rate base determination is allocated to PAWC's existing water customers, to Steelton customers, or to both the existing PAWC water customers and Steelton customers.³

b. The notices do not include a full description of the PUC's role. See Application, Appendix A-18-d. Pursuant to 52 Pa. Code § 53.45(b)(1)(i), required language in the notice of a rate proceeding is a description of the PUC's role in the proceeding. The OCA submits that similar language to what is included in rate case notices regarding the PUC's role, as modified to reflect that this is an application proceeding, should be added to the notices sent to PAWC's and Steelton's customers.

c. The OCA submits that additional wording changes are needed to clarify the notices and the process because it is an application proceeding rather than a general rate increase proceeding. For example, the proposed acquisition will not immediately, but may in the future, affect water bills of PAWC customers, including the new Steelton customers. It is not known when PAWC will file its next base rate case. Further, the PUC may approve, modify or deny the acquisition and may approve or, modify or deny the \$22.5 million addition to rate base.

² Section 53.45(b)(1)(i) provides the language that is required in the notice, including the impact on the customers' bills, separated by customer class, and using a typical usage level.

³ The range of impact on customers can be calculated using the information in the filing and other publicly available information.

6. The OCA's proposed revisions to the notice to be sent to the customers of PAWC are attached hereto as Attachment B.⁴ The same revisions should also be made to the Steelton notice.⁵ While the OCA has filed the present Petition to preserve its right to seek appellate review, the OCA is willing to work with PAWC, Steelton, and the Commission to resolve the conflicting positions regarding the proper notices to be sent to the existing PAWC customers and to the Steelton customers.

7. If the Commission does not grant the OCA's Petition for appeal of staff action and require PAWC to provide notice that meets the fundamental requirements of 52 Pa. Code § 53.45 and the New Garden Order, then it is the OCA's position that interlocutory appellate review of the January 17, 2019 Secretarial Letter is the most timely and efficient means to resolve whether the notices comply with requirements of Section 53.45(b)(1-4) and the New Garden Order.

8. The Secretarial Letter accepting the individual notices attached to PAWC's revised Application is a "final action" by the Commission⁶ but is not a "final order" for purposes of appellate review because it does not contain the express determination that "an immediate appeal would facilitate resolution of the entire case." Rule 341(c) of the Pennsylvania Rules of Appellate Procedure provides that an "order or other form of action" that adjudicates fewer than all the claims and parties is not appealable unless the Commission has made that express

⁴ The OCA is providing this revised notice based on the circumstances for this particular case. The OCA does not waive any arguments or positions as to the proper notice in other cases.

⁵ The OCA estimates that the impact on customers (combined existing PAWC water customers and Steelton customers or existing PAWC water customers) is approximately 0.2%. See Attachment C (Affidavit of Ashley E. Everette, Regulatory Analyst). The OCA has calculated the impact on Steelton customers to be 0.2% to 47%.

⁶ Pursuant to 52 Pa. Code § 5.44(a), actions taken by staff, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless appealed to the Commission. The OCA has sought appeal of the Secretarial Letter. If the Commission grants appeal, the Secretarial Letter will not be the Commission's final action. If appeal is not granted, the OCA seeks an express determination that the Secretarial Letter constitutes a final action of the Commission with regard to acceptance of the individual notices attached to PAWC's Application.

determination. Accordingly, the OCA requests the Commission grant this requested relief and amend the Secretarial Letter to include the required determination or enter an Order that includes the required determination.

9. In support of its requested relief, the OCA submits that immediate appeal of the notice issue will not harm any parties and will benefit the public interest because due process requirements related to notice will be met, without unnecessary confusion, duplication of effort and cost. The following considerations set forth in the official notes accompanying Rule 341(c)⁷ also weigh in favor of the Commission's rendering the requested determination:

Whether there is a significant relationship between adjudicated and unadjudicated claims.

The OCA submits that the adjudication of the notice issue is factually and legally distinct from the other matters that will be addressed by the Commission in this proceeding, which include *inter alia* whether the proposed transaction provides substantial affirmative benefits and whether the valuation of acquired assets and ratemaking proposals are reasonable.⁸

Whether there is a possibility that an appeal would be mooted by further developments.

The Commission's disposition of other matters in the proceeding will not moot the notice issue before the appellate court. Even if the Commission denies the current Application, PAWC and Steelton could modify the terms of the proposed acquisition, refile and provide the same type of notice that the OCA challenges here. If there is no appellate resolution of the notice issue itself, there is reasonable expectation that the controversy will reoccur in future applications filed

⁷ The official notes accompanying Rule 341(c) also require the Commission to consider four factors in determining that the Secretarial Letter is a final determination with regard to the customer notice. 210 Pa. Code § 341(c) (Official Notes).

⁸ Through its Application, PAWC seeks Commission approval of the acquisition of water assets, service to Steelton's customers, ratemaking rate base, 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, deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, the Asset Purchase Agreement (APA) with Steelton, under 66 Pa. C.S. §§ 1102, 1329 and 507.

under Section 1329.⁹ See, e.g., Friends of the Earth v. Laidlaw, 528 U.S. 167, 189 (2000); Adarand Constr., Inc. v. Slater, 528 U.S. 216, 224 (2000) ([M]ootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought).

The OCA notes that the New Garden Order is the subject of a Petition for Allowance of Appeal filed in the Pennsylvania Supreme Court. 743 MAL 2018. It is unknown whether that Petition will be granted and, if granted, when the appeal will be resolved. In the meantime, many Applications under Section 1329, with 6-month timeframes for disposition may be filed raising the customer notice issue. Thus, the timing and resolution by the Supreme Court is not reasonably likely to moot appeal of this proceeding to the Commonwealth Court.

Whether there is a possibility that the Commission will consider issues a second time.

Pursuant to this Court's Order in New Garden, individualized notice of the proposed acquisition must be provided at the start of all proceedings filed under Section 1329. Thus, it is likely that the legal question regarding sufficiency of notice will reappear in other cases. Indeed, the issue has already been raised in PAWC's Application to acquire Exeter Township under Section 1329.¹⁰ Thus, resolution of the notice issue by the appellate court in this proceeding will aid the Commission in resolving the same legal issue in Exeter and future Section 1329 proceedings initiated by PAWC and other utilities.

Whether an immediate appeal will enhance prospects of settlement.

Waiting to address the notice issue will be antithetical to settlement of the entire case *sub judice*, because the OCA's appeal of the Commission's determination regarding notice will be

⁹ Indeed, the customer notice submitted by PAWC for Steelton is identical in all relevant respects to the notice submitted in Exeter.

¹⁰ Docket No. A-2018-3004933. In that proceeding, the OCA filed a Petition to Reject or Hold in Abeyance Acceptance of Application, a Protest and a Petition for Stay, in which it raised the same objections to the notice attached to PAWC's revised Application.

delayed until a final order is entered disposing of all claims and all parties. As such, the likelihood of settling the other issues in the case will be lessened by the knowledge that a comprehensive settlement is not possible due to the need for appellate review of the notice issue.

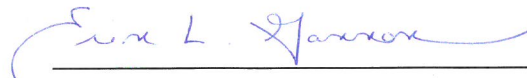
III. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate requests that the Commission grant the Petition for Appeal of Staff Action, reverse the January 17, 2019 Secretarial Letter, reject the customer notices attached to PAWC's Application and require notices that are consistent with 52 Pa. Code § 53.45 and the Commonwealth Court's Order in New Garden. In this case, the Commission does not need to address the OCA's requested determination of finality with regard to the January 17, 2019 Secretarial Letter.

If the Commission determines that the January 17, 2019 Secretarial Letter is a final action on the sufficiency of the customer notice and denies the OCA's request for appeal from staff action under 52 Pa. Code § 5.44, then the OCA requests that the Commission make a determination of finality under Pa. R.A.P. 341(c) by expressly stating that "an immediate appeal [of its January 17, 2019 action] would facilitate resolution of the entire case."

The OCA respectfully requests expedited treatment of this Petition, so the Commission may consider it at its Public Meeting scheduled for February 7, 2019.

Respectfully Submitted,



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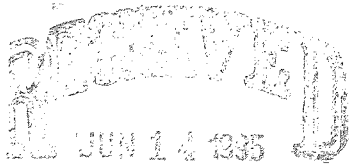
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January 24, 2019
265495

Attachment A
“Milesburg Notice”



OFFICE OF
UNDER ADVOCATE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

South River Power Partners, L.P.	:	
	:	Docket No.
v.	:	C-00935287
	:	
West Penn Power Company	:	

FIFTH INTERIM ORDER

Introduction

South River Power Partners, L.P., has asked this Commission to require West Penn to enter into a long-term contract for the purchase of electric power under the provisions of the Public Utility Regulatory Policies Act of 1978 and this Commission's regulations.

By Order entered June 3, 1994, this Commission granted West Penn's petition for permission to institute competitive bidding for power purchases to the extent that it authorized West Penn to utilize a competitive bidding program for the procurement of qualified facility capacity on an interim basis. In its Order this Commission waived its regulations at 52 Pa. Code §57.31 et seq. to the extent that the regulations require West Penn to negotiate with qualifying facilities for capacity purchases, effective July 22, 1993. With regard to the present case initiated by South River, this Commission stated that:

Therefore, whether or not South River's proposed project is exempted from West Penn's interim competitive bidding program will depend on our final decision on South River's complaint. If we grant South River's requested relief and direct West Penn to enter into a power purchase agreement with South

River, then South River's proposed QF would obviously be exempted from West Penn's interim competitive bidding program. If, however, we dismiss South River's complaint, then South River in order to have the opportunity to sell capacity and associated energy to West Penn, would be required to participate in any interim competitive bidding process conducted by West Penn.

Order entered 6/3/94 at P-00930737, slip op. p. 17.

South River, West Penn and another party filed appeals from the above Order which resulted in the stay of this matter from August 2, 1994 until May 4, 1995, when the stay was lifted by the Fourth Interim Order. The stay was lifted as a result of the withdrawal of the appeals. That order also set forth a schedule to consider West Penn motions pertaining to continuing a stay, dismissing the case and West Penn's request to present testimony on various factual aspects associated with compliance with the "Milesburg notice" requirements. A further prehearing conference was scheduled and held on June 2, 1995 to consider the above matters as well as concerns of South River. The conference was immediately followed by an on-the-record hearing to take oral argument on the motions and any testimony that any party wanted to present on the contents, costs and mechanisms involved in preparing and mailing the "Milesburg notice".

In the course of the conference, counsel for West Penn stated that West Penn was dropping its request for a stay. The matters that were discussed and argued included West Penn's motion to dismiss, the nature, contents and mechanics of a "Milesburg notice", West Penn's request to bifurcate the proceeding to the extent of first addressing the issue of a legally enforceable

obligation, discovery and scheduling. Each is discussed in turn below.

Motion to Dismiss

West Penn filed its renewed motion to dismiss under date of April 24, 1995. As reasons to reconsider the prior decision denying its first motion to dismiss, West Penn contends that this Commission's regulations on avoided cost at 52 Pa. Code §57.34(c)(4)(iii) are no longer applicable. Further, West Penn contends that the power purchase area of law is changing rapidly and that state court and FERC decisions indicate that the present matter should be dismissed.

In its response and at the further prehearing conference, South River urged that the motion be denied as had West Penn's first motion to dismiss in an interim order dated December 20, 1993. West Penn is correct, as acknowledged by South River, that the Commonwealth Court has recently questioned the application of this Commission of the so-called coal plant proxy. See Pennsylvania Electric Company v. Pa.P.U.C., ___ Pa. Commonwealth Ct. ___, 648 A.2d 63 (1994). However, counsel for South River noted that South River's petition, while asserting that the coal plant proxy applies, nevertheless provides in its paragraph 18 an alternative request for relief which would encompass a different method for the calculation of avoided costs.

Admittedly the area of purchased power is being closely considered in both state and federal forums. That argues more to the need to more fully develop the record in this case than to

terminate it at this juncture. Based on the above brief review and the rationale of the prior interim order that denied the first motion to dismiss, I conclude that the present West Penn motion should likewise be denied.

Milesburg Notice

No one disputes the need to notify West Penn's customers of the pendency of the present case. See Interim Order, C-00935287 (this case) dated 2/23/94, slip op. pp. 5-8. The method, timing, cost and content are very much in dispute between West Penn and South River.

As in other cases filed and tried in Pennsylvania, the notice will be provided by a billing stuffer. West Penn will be directed to include the notice in a billing cycle for or before September 1995. I conclude this is doable based on the testimony of West Penn's witness at the June 2, 1995 conference/hearing.

The cost of the notice was dealt with in the second interim order dated February 23, 1994, which directed South River to pay for printing the notice and provide to West Penn for inclusion in the billing envelopes. The testimony presented by West Penn does not support imprinting the envelopes or the payment of overtime for West Penn employees. To be clear here, South River's obligation is to provide the printed notices (paper, ink, imprinting, boxing or other containers, etc. to West Penn's specifications) to West Penn or pay its costs as testified to by its witness.

As to content, the notice drafted by the Commission's Law Bureau is direct and performs the necessary function of providing clear notice to West Penn's ratepayers of the pending application and an approximation of financial effects of various outcomes in the litigation process. Assuming the notice is inserted in the September billing cycle, the date for filing complaints should be October 30, 1995. (If inserted in the August cycle, the date should be October 2, 1995.) For the convenience of the parties, a copy of the Law Bureau notice is attached as Appendix A.

Bifurcation and Schedule

After a review of the current cases cited by the parties and the transcript of the prehearing conference presided over by ALJ Kashi in Petition of MidAtlantic Cogen, Inc., P-00940820, February 10, 1995, I am satisfied that resolution of this present matter can be expedited by treating the issue of a legally enforceable obligation as a threshold matter. To that end, the parties are directed to propose a schedule for hearings in November 1995 to address whether a legally enforceable obligation exists. Briefing will be accelerated or done by trial brief. Hearings on all remaining issues would be held in January 1996, or as soon as reasonably possible. All parties should submit their proposals for a schedule to me in writing on or before July 14, 1995. Thereafter a schedule for hearings and briefing(s) will be established in a further interim order. As the prior stay has been lifted, the parties should consider the discovery procedures established in the

interim order dated February 23, 1994 as operative until modified by a further order.

ORDER

In consideration of the foregoing,

IT IS ORDERED THAT:

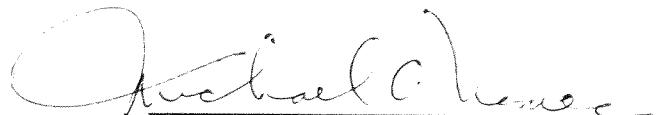
1. The motion of West Penn Power Company to dismiss the present proceeding is denied.

2. West Penn shall include with its bills to its customers on or before its September 1995, billing cycle the Milesburg notice as drafted by this Commission's Law Bureau as approved above and attached here as Appendix A.

3. South River Power Partners, L.P. shall provide the printed Milesburg notice in accordance with West Penn's requirements for inclusion in the billing cycle at its sole and exclusive expense as discussed in the preceding interim order.

4. All parties wishing to do so shall provide the undersigned presiding officer with proposed schedules for hearing and briefing in accordance with the discussion in the preceding interim order on or before July 14, 1995.

Date: June 12, 1995



MICHAEL A. NEMEC
Administrative Law Judge

Parties of Record: C-00935287

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NOTICE OF FILING OF PETITION
FOR AN ORDER DIRECTING WEST PENN
POWER COMPANY TO PURCHASE CAPACITY
AND ENERGY FROM SOUTH RIVER POWER
PARTNERS, L.P.

TO OUR CUSTOMERS:

On October 28, 1993, South River Power Partners, L.P. (South River) filed a petition with the Pennsylvania Public Utility Commission ("PUC") requesting that the PUC order West Penn Power Company ("West Penn") to purchase capacity and energy from South River's proposed qualifying facility (QF). Under a federal law and state regulations implementing that law, electric utilities such as West Penn are required to purchase power from QFs at rates based upon the costs the electric utility can avoid by buying QF power ("avoided costs"). An electric utility's avoided cost includes both avoided capital and operating costs, as applicable. South River contends that West Penn needs capacity and, under PUC regulations, is required to purchase power from South River's proposed QF under a long term contract at rates that include avoided capital and operating costs. West Penn has denied that it needs the capacity represented by South River's proposed QF. West Penn also claims that the cost of the proposed purchase is too high.

South River's petition has been assigned by the PUC to an administrative law judge for evidentiary hearings. At the end of the hearings the PUC will rule on South River's request. If the PUC rules that West Penn needs additional generating capacity and that the purchase price is at or below West Penn's avoided costs, the PUC may order West Penn to sign a power purchase contract with

South River. South River's proposed QF is a 240 MW coal and coal-fired facility to be located in Fayette County, Pennsylvania.

If the PUC orders West Penn to sign a contract with South River, the cost for the purchased power will be collected from ratepayers over the term of the contract. The costs would be collected through West Penn's Energy Cost Rate on a dollar for dollar basis. It cannot be stated exactly what these costs might be because the PUC has not yet determined how much generating capacity West Penn may need, if any. At the low end, the costs may be zero if the PUC finds that West Penn doesn't need any more generating capacity. At the high end the costs may reach approximately \$134 million per year if the PUC finds that West Penn needs all of the capacity offered by South River. However, these costs would be no more than West Penn's avoided costs, as determined by the Commission. West Penn makes no profit on power purchases from QFs.

If South River's petition is granted, average customers may pay the following costs per month based on an annual payment of \$162 million by West Penn:

	<u>Estimated Monthly Cost</u>	
Average Residential Customer (843 kwh/month)	\$	7.48
Average Commercial & Small Industrial Customer (6,700 kwh/month)	\$	55.04
Average Industrial Customer (4,713,467 kwh/month)	\$	30,601.94

If the PUC orders West Penn to buy power from South River these costs would be collected from all ratepayers when South River's proposed QF goes into commercial operation. South River projects its proposed QF will go into commercial operation on July 1, 1998.

You can examine a copy of the petition filed in this case at any local West Penn office or at West Penn's general office in Greensburg, Pennsylvania. You can also examine all of the documents filed in these cases in the PUC's File Room in Harrisburg.

As a customer, you are entitled to participate in the PUC hearings for this case. To do that, you must file a complaint with the PUC no later than _____ which is approximately thirty (30) days after all customers have received this notice. You may obtain complaint forms by writing the Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, PA 17120 or by calling the PUC at (717) 787-6982. You don't need to have an attorney to do so. You can also send a letter with your comments to the PUC and request the PUC to establish a public hearing at which you may state your comments. Complaints and letters must include the case docket number, which is C-00935287. You must send any complaints and letters to: Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265.

Attachment B
OCA Revisions to PAWC Notice

1 NOTICE OF PROPOSED ACQUISITION AND RATE BASE ADDITION

2 [A-2019-3006880](#)

3
4 Dear Customer:

5
6 On January [redacted], 2019, the Pennsylvania Public Utility Commission (PUC) conditionally accepted for filing the
7 application of Pennsylvania American Water (PAW) for approval to acquire the Steelton Borough Authority
8 (Steelton) water system assets. Steelton serves approximately 2,472 customers in Dauphin County, Pa. PAW's
9 application also requests that the PUC authorize an addition of up to \$22.5 million to PAW's rate base pursuant
10 to 66 Pa. C.S. § 1329. A utility's rate base is the value of property used by the utility to provide service to its
11 customers and is one of several components used to establish a utility's customer rates. This acquisition will
12 not immediately, but may in the future, affect ~~your water or wastewater bills of PAW customers, including the~~
13 [new Steelton Borough customers](#). The PUC will issue a decision on the application on or around [6 months
14 after final acceptance].

15
16 PAW is not requesting a rate increase as part of the acquisition. Your rates will not change until the conclusion
17 of PAW's next rate case where PAW requests and receives PUC approval to increase its rates. ~~At this~~
18 ~~time~~ [Currently](#), it is ~~unclear not known~~ when PAW will file its next rate case ~~and what the impact of the Steelton~~
19 ~~acquisition may be on your rates~~. [At that time, PAW's request for an increase in rate base of up to \\$22.5 million](#)
20 [could increase water rates by approximately 0.2%. This amount could change.](#)

21
22 **PUC ROLE**

23 [The state agency which approves acquisitions and rates for regulated public utilities is the PUC. The PUC will](#)
24 [review and investigate the proposed acquisition and requested \\$22.5 million in additional rate base. After](#)
25 [examining the evidence, the PUC may approve, modify or deny the acquisition and may approve ~~or~~, modify](#)
26 [or deny the \\$22.5 million addition to rate base.](#)

27 **ACTIONS YOU CAN TAKE**

28 The PUC is the state agency that reviews proposed acquisitions and proposed rates. You can support or
29 challenge PAW's request by:

- 30
31 1) Sending a letter to the PUC. You can tell the PUC why you support or object to PAW's acquisition of
32 Steelton's water system in your letter. This information can be helpful when the PUC investigates the
33 application. Send your letter to the Pennsylvania Public Utility Commission, Post Office Box 3265,
34 Harrisburg, PA 17105-3265.
- 35
36 2) Filing a protest or a petition to intervene. If you want to be a party to the case, you must file a protest
37 or a petition to intervene. You then have an opportunity to take part in all the hearings about the
38 proposed acquisition. You can receive copies of all materials distributed by the other parties. Protests
39 and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on
40 or before [Date]. Filings must be made with the Secretary of the Pennsylvania Public Utility
41 Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on PAW's counsel at
42 Pennsylvania American Water, Attn: Susan Simms Marsh, Deputy General Counsel, 800 West
43 Hersheypark Drive, Hershey, PA 17033.

44
45 [You also may contact the Office of Consumer Advocate \(OCA\) for any questions you have about this filing.](#)

1 [The OCA is a state agency that represents the interests of Pennsylvania utility consumers. You can reach the](#)
2 [OCA toll-free at 800-684-6560 or at consumer@paoca.org.](#)

3
4 The documents filed in support of the application are available [on the PUC's website at www.puc.pa.gov](#), for
5 inspection and copying at the Office of the Secretary of the PUC between 8 a.m. and 4:30 p.m., Monday
6 through Friday, ~~on the PUC's website at www.puc.pa.gov~~ and at PAW's offices at 800 West Hersheypark
7 Drive, Hershey, PA 17033. The PUC docket number is A-2019- .

Attachment C
Everette Affidavit

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania- :
American Water Co. Pursuant to Sections :
507, 1102, and 1329 of the Public Utility : Docket No. A-2019-3006880
Code for Approval of its Acquisition of the :
Water Assets of Steelton Borough Authority :

**AFFIDAVIT OF
ASHLEY E. EVERETTE**

JANUARY 24, 2019

1. My name is Ashley E. Everette. I am a Regulatory Analyst employed by the Pennsylvania Office of Consumer Advocate. My business address is 555 Walnut Street, Forum Place, 5th Floor, Harrisburg, Pennsylvania 17101.
2. I have testified as an expert witness on accounting and finance issues in water, wastewater, electric and natural gas cases, including each Section 1329 proceeding that has been filed with the Commission to date.
3. Steelton Borough Authority revenues from water charges in 2017 were \$2,664,325. Appendix A-19-a, 2017 Financial Report, page 4.
4. PAWC estimates annual revenues in the first year of ownership of \$2,794,000. Appendix K of the Application.
5. The annual revenue requirement is calculated as the sum of the return on net rate base, operation and maintenance expenses, annual depreciation expense, and taxes.

6. PAWC claims that its 2018 capital structure for water operations is 44.89% long-term debt, 0.17% preferred stock, and 54.94% common equity. See Docket No. R-2017-2595853, PAWC Statement No. 13, Exhibit No. 13-A, Schedule 12.
7. PAWC claims that its 2018 cost rate for long-term debt is 5.25% and its 2018 cost rate for preferred stock is 8.66%. See Docket No. R-2017-2595853, PAWC Statement No. 13, Exhibit No. 13-A, Schedule 12.
8. The cost of equity for Distribution System Improvement Charge (DSIC) purposes shown in the most recent Quarterly Earnings Report for water utilities was 9.95%. See Docket No. M-2018-3006643.
9. Using the above capital structure and cost rates, PAWC's total cost of capital is estimated to be 7.84%, as shown in the chart below:

	<u>Capital Structure</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Long-Term Debt	44.89%	5.25%	2.36%
Preferred Stock	0.17%	8.66%	0.01%
Common Equity	54.94%	9.95%	<u>5.47%</u>
			7.84%

10. The estimated net operating income requirement on the \$22.5 million rate base is \$1,764,000 (\$22.5 million x 7.84%).
11. PAWC estimates operation and maintenance expense associated with the Steelton system to be \$1,391,000. Appendix K of the Application.
12. The estimated amount of taxes other than income is \$92,000. Appendix K of the Application.

13. PAWC estimates annual depreciation expense in the first year of ownership to be \$364,000. Appendix K of the Application. If this is the depreciation expense on the \$22.5 million rate base, it represents a depreciation rate of 1.62% per year.
14. For calculating the estimated income tax liability, the estimated amount of tax-deductible interest associated with the acquisition is \$531,000, calculated as the weighted cost of debt (2.36%) times the \$22.5 million purchase price.
15. The current Pennsylvania corporate income tax rate is 9.99%.
16. The current federal corporate income tax rate is 21%.
17. Based on the levels of the net operating income requirement, operation and maintenance expenses, taxes other than income, and depreciation expense outlined above, the estimated total revenue requirement associated with PAWC ownership of the Steelton water system is \$4,112,000. This revenue requirement includes a provision for state income taxes of \$173,000 and federal income taxes of \$328,000.
18. A revenue requirement of \$4,112,000 would require an increase of \$1,318,000 over the pro forma Year-1 revenues of \$2,794,000.
19. If the \$4,112,000 increase were applied only to the Steelton customers, the rates charged to Steelton customers would increase approximately 47% over the pro forma revenues in the first year of ownership ($\$1,318,000 / \$2,794,000$).

20. PAWC's pro forma 2018 sales revenues from Water Operations are \$667,585,862.
Joint Petition for Settlement of Docket No. R-2017-2595853, Summary Proof of Revenues.
21. If the \$1,318,000 increase were applied only to existing PAWC water customers, the rates charged to PAWC water customers would increase approximately 0.2% over the pro forma 2018 sales revenues ($\$1,318,000 / \$667,585,862$).
22. The combined revenues from Steelton water customers and existing PAWC water customers is approximately \$670,379,862 ($\$2,794,000 + \$667,585,862$).
23. If the \$1,318,000 increase were applied equally to Steelton and PAWC water customers, the rates charged to these customers would increase approximately 0.2% over the pro forma 2018 sales revenues ($\$1,318,000 / \$670,379,862$).
24. Thus, if the revenue requirement to existing PAWC water customers includes the costs of ownership of the Steelton system, existing PAWC water customers' rates could increase approximately 0.2% due to this acquisition.

265486

COMMONWEALTH OF PENNSYLVANIA :
 : ss
Dauphin County :

Ashley E. Everette, Regulatory Analyst for the Office of Consumer Advocate, being duly sworn (affirmed) according to law, deposes and says that the facts contained in the foregoing Affidavit in the matter of In re: Application of Pennsylvania-American Water Co. Pursuant to Sections 507, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of the Water Assets of Steelton Borough Authority, at Docket No. A-2019-3006880, are true and correct; or are true and correct to the best of her knowledge, information and belief and she expects to be able to prove the same at the hearing hereof.

Ashley E. Everette

Ashley E. Everette
Regulatory Analyst
Office of Consumer Advocate

Sworn and subscribed
before me this 24th day
of January, 2019.

My Commission
Expires August 14, 2020

Heather R Yoder
Signature of Official
Administering Oath

Commonwealth of Pennsylvania
NOTARIAL SEAL
Heather R Yoder, Notary Public
Harrisburg City, Dauphin County
My Commission Expires August 14, 2020

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania-American :
Water Company Pursuant to Sections :
507, 1102, and 1329 of the Public Utility : Docket No. A-2019-3006880
Code for approval of its Acquisition of :
Water Assets of the Steelton Borough :
Authority :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Petition for Appeal of Staff Action and/or a Determination of Finality, 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 24th day of January 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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

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

John Evans, Esquire
Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Kathy L. Pape, Esquire
Adeolu A. Bakare, Esquire
Alessandra L. Hylander, Esquire
McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166

Susan Simms Marsh, Esquire
Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

/s/ Erin L. Gannon

Erin L. Gannon

Senior Assistant Consumer Advocate

PA Attorney I.D. # 83487

E-Mail: EGannon@paoca.org

Christine Maloni Hoover

Senior Assistant Consumer Advocate

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Harrison W Breitman

Assistant Consumer Advocate

PA Attorney I.D. # 320580

E-Mail: HBreitman@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: January 24, 2019

*265492