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January 28, 2019

VIA eFiling

Rosemary Chiavetta, Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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 the Water Assets of Steelton Borough Authority
Docket No. A-2019-3006880

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of Pennsylvania-American Water Company to the Office of Consumer Advocate's Petition for Appeal of Staff Action in the above-referenced proceeding. This document is permitted to be filed electronically.

A copy of the Answer has been provided to the participants in the manner indicated on the enclosed Certificate of Service. Please contact me if you have any questions.

Respectfully submitted,

Susan Simms Marsh

Enclosures

cc: Shaun Sparks, Esq. – Law Bureau VIA E-mail
Bureau of Technical Utility Services VIA E-mail
Office of Special Assistants VIA E-Mail

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 water system assets of the Steelton
Borough Authority, related water service rights, fair
market valuation rate making treatment, deferral of the
post-acquisition improvement costs, and certain
contracts with municipal corporations

Docket No. A-2019-3006880

**PENNSYLVANIA-AMERICAN WATER COMPANY’S ANSWER
TO THE OFFICE OF CONSUMER ADVOCATE’S PETITION FOR
APPEAL OF STAFF ACTION AND/OR A DETERMINATION OF FINALITY**

AND NOW COMES Pennsylvania-American Water Company (“PAWC” or “Applicant”), 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 Appeal of Staff Action and/or a Determination of Finality” (“Petition”), filed on January 24, 2019, in the above-referenced matter. PAWC respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) expeditiously deny the Office of Consumer Advocate’s Petition. In support whereof, PAWC avers as follows:

I. INTRODUCTION AND SUMMARY

PAWC respectfully submits that the Office of Consumer Advocate’s Petition is largely based on its misunderstanding of the Commission’s Bureau of Technical Utility Services (“staff” or “TUS”) delegated authority as it relates to Section 1329 Application Filings. In this regard, a proper understanding of the staff’s delegated authority will make it obvious that the Office of

Consumer Advocate (“OCA”) lacks a direct, immediate or substantial interest in the staff action in the instant Application. It is equally apparent that an appeal to the Commonwealth Court of Pennsylvania (“Commonwealth Court”) at this time would be premature and is not ripe for OCA’s appeal.

The Commission has developed an extensive Application Filing Checklist (“checklist”) of items that must be filed with a Section 1329 Application. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Tentative Implementation Order entered July 21, 2016; Final Implementation Order entered October 27, 2016). On January 2, 2019, PAWC filed the instant Application, together with the materials required by the checklist. The Commission has delegated authority to TUS to determine whether an applicant has submitted all of the required materials. During TUS 66 Pa. C.S. §1329 Application Completeness Review, staff initially found PAWC’s Application was incomplete, and so notified PAWC on January 9, 2019. PAWC subsequently filed the requested items. By Secretarial Letter dated January 17, 2019 (“January 2019 Secretarial Letter”), PAWC received its conditional acceptance of the Application for filing purposes, *i.e.*, that the Application was administratively complete.

TUS has no delegated authority to make substantive determinations regarding the materials submitted to satisfy the checklist. *Cf.*, *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Tentative Supplemental Implementation Order entered September 20, 2018), p. 15 (“The Bureau of Technical Utility Services is to evaluate only whether the Application Checklist is complete and responsive to the data requested. It shall not refuse to perfect an application on the basis that the Bureau is dissatisfied with the quality of items submitted in response, or whether additional information may later be required.”). Consequently, the OCA mischaracterizes TUS’s action when it states: “The Secretarial Letter accepted, *inter alia*, a

customer notice that will be sent by PAWC and Steelton Borough Authority (“Steelton”) to their customers regarding PAWC’s Application.” Petition, p. 1 (emphasis added). TUS made no determination as to whether that customer notice satisfies the Commonwealth Court’s directive in *McCloskey v. Pa. Pub. Util. Comm’n*, 1624 C.D. 2017 (Oct. 11, 2018 (“*McCloskey*”). Such a determination would far exceed TUS’s delegated authority. Instead, TUS merely found that PAWC had submitted a customer notice as required by the checklist.

The OCA is not aggrieved by TUS’s finding that the Application is administratively complete. The OCA has no direct, immediate, or substantial interest in that finding, and so lacks standing to file a petition for reconsideration from staff action pursuant to 52 Pa. Code § 5.44.

In the alternative, the OCA requests a finding that the Secretarial Letter is a final order with regard to customer notice, so that an appeal may be taken immediately to Commonwealth Court. This request is premature; the Application has not yet been accepted for filing and there has been no adjudication addressing the substance of the customer notice. It would be unreasonable for the Commission to allow the OCA to appeal an application under these circumstances. The Commission should expeditiously deny the OCA’s meritless filing.

II. ANSWER

A. Relief Requested

The Commission stated in *Verizon Pennsylvania, LLC et al. v. Conversent Communications of Pennsylvania LLC et al.*, 2008 Pa. PUC LEXIS 380 at *10:

The test for standing in Commission proceedings is well established. As the Commonwealth Court explained in [*George v. Pa. Pub. Util. Comm’n*, 735 A.2d 1282 (Pa. Cmwlth. 1999), *appeal denied* 758 A.2d 1202 (2000)], to establish standing, a party must satisfy all three parts of a three-pronged test. First, the party must have a substantial interest in the subject of the case. A substantial interest is an interest that surpasses the common interest of all citizens in procuring obedience

to the law. Second, the party's interest must be direct. To satisfy this element of the test, the party must demonstrate that the subject of the Complaint caused harm to its interests. Third, the party's interest must be immediate and not a remote consequence. An immediate interest involves the nature of the causal connection between the action complained of and the complainant's injury and the interest the complainant seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.

As the Applicant in this proceeding, PAWC has a substantial, direct and immediate interest in this proceeding. PAWC submitted the Application, and received the January 2019 Secretarial Letter, which conditionally accepted the Application for filing purposes. The January 2019 Secretarial Letter directed PAWC to serve copies of the Application upon certain parties, and to provide individualized notice of the proposed acquisition to all potentially affected PAWC water and wastewater division customers. The Commission also directed that concurrent notice be provided to all current Steelton water customers. Neither PAWC nor Steelton has yet provided notice to any of its customers.

The OCA, in contrast, lacks a substantial, direct, or immediate interest in TUS's decision to conditionally accept for filing the Application. TUS's decision was a ministerial one; it found the Application included all items on a checklist. It did not make any substantive determinations regarding the merits of the Application. The OCA alleges no substantial, direct, or immediate interest in the determination that the filing is administratively complete. PAWC respectfully submits that the OCA has no interest in that determination.

The only matter that would properly be before the Commission on a petition for reconsideration of staff action regarding the January 2019 Secretarial Letter is whether TUS correctly found that the Applicant satisfied the checklist. That is not what the OCA seeks. The OCA seeks to address the substance of certain checklist items (the customer notices of PAWC and Steelton). Disputes regarding the substance of the Application should be resolved after the

Application is accepted for filing, during the ordinary course of the litigation process. The OCA's Petition for Reconsideration from Staff Action therefore should be denied.

Similarly, the OCA's request that the Commission determine that the Secretarial Letter is a final order with regard to customer notice should be rejected. The Commission has only made a determination that PAWC's Application is complete; it has not made any determinations, much less a final determination, regarding the substance of the customer notice. To say that TUS's decision is a final determination regarding the substance of the customer notice completely mischaracterizes the nature of TUS's action. The Commission has not yet adjudicated the substance of PAWC's customer notice, let alone rendered a final decision on it. In fact, this case has not yet even been accepted for filing purposes. The OCA fails to explain how it can file an appeal in a case that has not even been accepted for filing.

The OCA states that it "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." OCA's Petition, p. 2. The OCA's right to seek appellate review is not yet ripe. The Commission should resist the OCA's rush to judgment and consider this important issue in a thoughtful and consistent manner.

B. Basis for Relief Requested

1. In the *McCloskey* decision, the Commonwealth Court required that notice of a Section 1329 Application be provided to all ratepayers. The Application included a draft notice to be provided by PAWC to its customers, and a draft notice to be provided by Steelton to its customers. TUS found the Application complete. That is the only decision TUS made, and it was clearly correct.

2. PAWC filed its Application on January 2, 2019. TUS initially found the Application incomplete. After PAWC submitted additional information, TUS found that the Application was complete. In particular, it included a notice to customers from PAWC and a notice to customers from Steelton. TUS made no determination other than that the Application was complete.

3. The January 17, 2019 Secretarial Letter conditionally accepted the Application because it found the Application complete. The Application, however, has not been accepted for filing purposes; this will only occur after PAWC has complied with the Commission's directives regarding service of the Application on certain parties, providing ratepayers with notice, and correcting certain proposed rates.

4-5. The OCA's Petition offers extensive legal argument concerning the substance of the proposed customer letters from PAWC and Steelton. TUS, however, does not have delegated authority to address the substance of materials submitted with a Section 1329 Application; it merely has authority to determine whether an application is complete. TUS staff correctly determined that the Application included customer notices from PAWC and Steelton to their respective customers.

6. The OCA's preferred version of the customer notice is not properly before the Commission on a Petition for Reconsideration of Staff Action. TUS's only task was to review the documents submitted by PAWC and determine if the Application was complete. It found that PAWC submitted everything it was required to submit. Thus, the only question properly presented to the Commission on a Petition for Reconsideration of Staff Action is whether TUS correctly concluded that PAWC submitted everything it was required to submit – including a customer

notice. Other materials – including the OCA’s preferred alternative – are irrelevant and should not be considered.

7. Interlocutory appellate review would be premature at this time. TUS made a determination that the Application was complete; it did not address the substance of the customer notice. No administrative law judge has addressed the substance of the customer notice, nor has the Commission itself addressed the substance of the customer notice. The OCA seeks to have the Commonwealth Court issue a decision on this matter before any arm of the Commission has an opportunity to do so. This would be inappropriate. The Commission is the administrative agency with administrative expertise in utility regulation. It should have an opportunity to issue a decision on this important matter.

8. The January 17, 2019 Secretarial Letter only constitutes an “action” of the Commission on the issue of whether the Application is complete. TUS’s action in finding the Application complete is clearly correct. Permitting an appeal of that action would waste the Parties’ and the Commission’s time and resources. An immediate appeal of that decision would not facilitate resolution of the entire case. Consequently, the Commission should not take any actions that would permit a premature appeal of that action to the Commonwealth Court.

9. The OCA’s Petition contains extensive legal argument based on the OCA’s fundamental mischaracterization of the issue decided by TUS. This topic has been adequately addressed above.

In addition, the OCA characterizes TUS’s action as an “adjudication.” OCA’s Petition, p. 7. TUS action was not an adjudication. TUS only has delegated authority to make the ministerial decision that a Section 1329 Application is complete. No arm of the Commission has yet addressed the substance of the customer notice. In fact, there is no adjudication of any issue

for an appellate court to review. The Commission has not yet even accepted the case for filing. An appeal under these circumstances is obviously premature.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should expeditiously:

- (1) Deny the Office of Consumer Advocate's Petition for Reconsideration of Staff Action pursuant to 52 Pa. Code § 5.44; and
- (2) Deny the Office of Consumer Advocate's request to treat the conditional acceptance of the Application for filing as a "final order" for purposes of appellate review.

Respectfully submitted,



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Dated: January 28, 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:

1/28/2019



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 pursuant to :
Sections 507, 1102, and 1329 of the Public :
Utility Code for Approval of its Acquisition : Docket No. A-2019-3006880
of the Water Assets of Steelton Borough :
Authority :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Pennsylvania-American Water Company's Answer to the Office of Consumer Advocate's Petition for Appeal of Staff Action, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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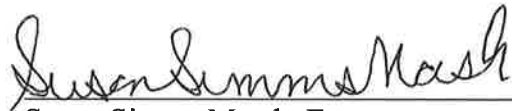
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Certificate of Service
PAWC Answer to OCA's Petition for Appeal
Docket No. A-2019-3006880
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The above-referenced Answer has been electronically filed on the Pennsylvania Public Utility Commission's eFiling system.

Dated: January 28, 2019



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