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February 4, 2019

VIA ELECTRONIC FILING
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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 Wastewater System Assets of Exeter Township; Docket No. A-2018-3004933

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Answer of Exeter Township to the Petition of the Office of Consumer Affairs for a Stay of the Proceeding in Pennsylvania-American Water Company's Amended Application in the above captioned matter. Please contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Samuel W. Cortes', written over a horizontal line.

Samuel W. Cortes

SWC:jcc
Enclosures

cc: Per Certificate of Service
Barnett Satinsky, Esq. (via email) (w/enclosure)

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California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Washington

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IN RE: APPLICATION OF :
PENNSYLVANIA-AMERICAN :
WATER COMPANY PURSUANT TO :
SECTIONS 507, 1102, AND 1329 OF : DOCKET A-2018-3004933
THE PUBLIC UTILITY CODE FOR :
APPROVAL OF ITS ACQUISITION :
OF THE WASTEWATER SYSTEM :
ASSETS OF EXETER TOWNSHIP :
:**

**ANSWER OF EXETER TOWNSHIP TO THE PETITION OF THE OFFICE OF
CONSUMER ADVOCATE’S FOR STAY OF PROCEEDING REGARDING
PENNSYLVANIA-AMERICAN WATER COMPANY’S AMENDED APPLICATION**

Exeter Township (“Exeter”), by and through its counsel, Fox Rothschild LLP, files this Answer to the Office of Consumer Advocate’s (the “OCA”) Petition for Stay of the Proceeding (“Petition for Stay”), filed on January 14, 2019, in the above-referenced matter. Exeter respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) deny the OCA’s Petition for Stay. In support, Exeter avers as follows:

I. INTRODUCTION

Exeter urges the Commission to deny the Petition for Stay, which is ostensibly a restatement of the OCA’s “Petition to Reject or Hold in Abeyance Acceptance of the Application” (“OCA’s Petition to Hold in Abeyance”). *See* Exeter’s Answer to the OCA’s Petition to Hold in Abeyance (the “First Exeter Answer”). Recognizing that the Commission may resolve the two filings in a single decision, Exeter incorporates the First Exeter Answer into this Answer as if set forth in full.

The Commission should deny the OCA's Petition for Stay and allow this case to move forward.¹

II. BACKGROUND

1. Admitted in part; denied in part. It is admitted that on September 25, 2018, PAWC filed the above-captioned Application with the Commission and 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 its Amended Application with the Commission. The Amended Application is a written document that speaks for itself and Exeter denies any characterization of the writing. By way of further response, on December 10, 2018, Exeter filed an application for a certificate of public convenience *nunc pro tunc* ("Exeter's Application"), docketed at Docket No. A-2018-3006505. Exeter's Application is a written document that speaks for itself and Exeter denies any characterization of the writing. All remaining allegations of this paragraph are denied.

2. Admitted in part; denied in part. It is admitted only that on December 14, 2018, the OCA's Petition to Hold in Abeyance was filed. The OCA's Petition to Hold in Abeyance is a written document that speaks for itself and Exeter denies any characterization of the writing. All remaining allegations of this paragraph are denied.

3. Admitted in part; denied in part. The Amended Application was reviewed by the Bureau of Technical Utility Services ("TUS") and, on December 19, 2018, the Commission issued a Secretarial Letter ("December 2018 Secretarial Letter") stating that the Amended

¹ Exeter opposes the request for a stay of this proceeding for the reasons stated in this answer and because the purported reasons for a stay identified by the OCA are insufficient to warrant such relief.

Application had been conditionally accepted for filing. The December 2018 Secretarial Letter directed PAWC to do the following: (a) provide individualized notice of the proposed acquisition to all potentially affected PAWC wastewater and water division customers; (b) ensure that notice would be provided to all current Exeter customers; and (c) publish newspaper notice of the Section 1329 Application. The December 2018 Secretarial Letter is a written document that speaks for itself and Exeter denies any characterization of the writing. All remaining allegations of this paragraph are denied.

4. Admitted in part; denied in part. It is admitted only that the OCA filed its Protest and Public Statement in this matter on January 14, 2019. The Protest and Public Statement is a written document that speaks for itself and Exeter denies any characterization of the writing. All remaining allegations of this paragraph are denied.

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

As the party seeking affirmative relief from the Commission, the OCA bears the burden of proof. 66 Pa. C.S. § 1329. As before, OCA's restatement of its arguments to halt this proceeding must fail.

In granting a stay, the Commission follows the Pennsylvania Supreme Court decision of *Pa. Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983).

Accordingly, a stay will be granted only if the following criteria are satisfied:

- 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.

Id. at 808-09. The OCA cannot satisfy any of the above four elements.

A. The OCA Is Unlikely To Prevail On The Merits.

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

Notwithstanding the arguments already devoted to the notice topic by the OCA in its Petition to Hold in Abeyance and current Motion to Stay, it is unknown what rates the Commission may set in a future base rate proceeding. Providing information based solely on speculation is both misleading and contrary to the law. In fact, the only ratemaking issue in a Section 1329 proceeding is the setting of a fair market value rate base for the acquired system. 66 Pa. C.S.A. § 1329. The proposed notices would inform customers of the limited rate impact of the proposed transaction – *i.e.*, the proposal to include an additional \$96 million in rate base. Specifically, the proposed notices are sufficient for the following reasons:

a. The proposed customer notices sufficiently describe the PUC's role in reviewing and approving an application. The OCA suggests adding more verbiage to the notices, but the notices already address the salient points.

b. The proposed customer notices sufficiently describe the customers' options in response to the notices. The OCA complains that the

notices do not include contact information for the OCA, but the Commission's regulation does not require this information to be included even in a customer notice of a proposed rate increase. *See* 52 Pa. Code § 53.45. Additionally, the OCA is one potential party, among others, and it should not receive special treatment.

c. The PUC is the administrative agency with the expertise to know best what should be contained in the consumer notice. PAWC and Exeter worked closely with the Law Bureau and TUS staff in drafting the proposed notices.

d. 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 pertinent contact information to satisfy due process requirements. *McCloskey v. Pa. Public Utility Com'n*, 195 A.3d 1055, 1068-69 (Pa. Commw. Ct. 2018) (addressing notice requirements to satisfy due process concerns). Interested customers could easily obtain additional and more detailed information if they so desire.

For these reasons and those stated above and below, the OCA is not likely to prevail on the merits. Consequently, the Commission should deny the OCA's request for a stay.

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. Irreparable injury is irreversible harm for which there is no possibility of compensatory or other remedial relief. *See Temple Ass'n of Univ. Professionals, American Federation of Teachers Local 4531 AFL-CIO v. Temple Univ. of Com. System of Higher Educ.*, 582 A.2d 63, 67 (Pa. Commw. Ct. 1990). Here, even if it was ultimately determined that the

proposed notices are constitutionally inadequate, which is denied, the result would be the same as in *New Garden*: 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. Thus, the OCA has an adequate remedy at law, and there is no risk of irreparable injury here.

C. The OCA Ignores That Issuing A Stay Will Substantially Harm The Interests Of Exeter And PAWC.

The issuance of the requested stay will substantially harm the interests of PAWC and Exeter Township who both have a statutory right to file and timely prosecute a Section 1329 Application. The Commission must decide a Section 1329 Application within six months.

PAWC and Exeter have entered into a legally-binding asset purchase agreement in reliance upon the above-identified statutory requirements. Granting the OCA's Petition would substantially harm the applicants in this proceeding and contravene express Pennsylvania public policy. *See* 66 Pa. C.S. § 1329; *Hall v. Amica Mut. Ins. Co.* 648 A.2d 755, 760 (Pa. 1994) ("Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.")

D. The Oca Fails To Recognize That Issuance Of A Stay Will Adversely Affect The Public Interest.

If the Commission agrees 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 applications. Merely raising concerns about customer notice – which could prove completely baseless – would warrant a rejection or stay of all Section 1329 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. Stating the

obvious, doing this also thwarts a legislative directive. 66 Pa. C.S. § 1329. The Commission should not allow the OCA to preclude all Section 1329 proceedings from moving forward for an indefinite period of time.

IV. CONCLUSION

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

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: February 4, 2019

By: /s/ Samuel W. Cortes
Barnett Satinsky, Esquire
Samuel W. Cortes, Esquire
Attorney ID Nos. 15767; 91494
Attorneys for Applicant, Exeter Township

**COMMONWEALTH OF PENNSYLVANIA
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VERIFICATION

I, John Granger, Township Manager for Exeter Township, hereby state that the facts above set forth 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).

Dated: 020419



John Granger

**COMMONWEALTH OF PENNSYLVANIA
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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 4th day of February, 2019, served a true copy of the Answer of Exeter Township to the Petition of the Office of Consumer Advocate Regarding Pennsylvania-American Water Company’s Amended Application upon the participants and by the methods set forth below, in accordance with the requirements of 52 Pa. Code § 1.54, as indicated below:

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