

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca
 /pennoca

FAX (717) 783-7152
consumer@paoca.org

May 10, 2019

Honorable Steven K. Haas
Honorable Benjamin J. Myers
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 Judge Haas and Judge Myers:

Enclosed please find copies of the Office of Consumer Advocate's Motion to Compel Answers to OCA Set V, Question 2 in the above-referenced proceeding.

The original has been electronically filed with the Secretary's Office and copies have been served upon the parties as evidenced by 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

Enclosures:

cc: PUC Secretary Chiavetta
Certificate of Service
*271958

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 : Docket No. A-2019-3006880
Approval of its Acquisition of the Water :
Assets of Steelton Borough Authority :

OFFICE OF CONSUMER ADVOCATE'S
MOTION TO COMPEL ANSWER TO
OCA SET V, QUESTION 2

I. INTRODUCTION

Pursuant to 52 Pa. Code §§ 5.103, 5.331, and 5.342(g), the Office of Consumer Advocate (OCA) hereby moves that the Presiding Officers direct Steelton Borough Authority (Authority) to provide the full and complete information requested in OCA Interrogatory Set V, question 2. The OCA seeks this information to support its efforts to timely analyze the valuations and introduce evidence addressing whether PAWC's request for an approved rate base of \$22,340,695 for the acquisition is reasonable. Given the extremely truncated litigation schedule, the OCA requests that the Presiding Officers direct the Authority to answer the interrogatories within two (2) days of the granting of this Motion.

II. MOTION TO COMPEL

A. Procedural Basis for Directing the Answering of OCA Set V-2

Procedurally, the objection should be rejected because it is untimely. OCA Set V interrogatories were emailed to the Steelton Borough Authority at 12:06 p.m. on Friday, April 19,

2019.^{1,2} Pursuant to the Prehearing Conference Order issued on April 18, 2019, oral objections to the interrogatories were due by April 24, 2019 and written objections were due by April 25, 2019.

Answers were due by April 29, 2019. The Instructions attached to OCA Set V state:

5) Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term “Steelton Borough Authority”, “Steelton”, “Borough” “Authority” or “you” as used herein includes Steelton Borough Authority, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Steelton Borough Authority has the right to compel the action requested herein.

Interrogatory OCA-V-2 states:

Please provide a copy of all proposals received by the Borough and any accompanying exhibits with respect to the proposed sale of the water system.

On April 29, 2019, counsel for the Steelton Borough Authority emailed responses to all interrogatories in OCA Set V. The response to OCA-V-2 states:

Response: See response to OCA-V-1

Response Provided By:
Douglas Brown, Secretary of the Steelton Borough Authority

The response to OCA Set V-1 states:

Response: The Borough did not issue a request for proposals for sale of the water system. The Steelton Borough Authority issued the request for proposals for the sale of the water system.

Response Provided By:
Douglas Brown, Secretary of the Steelton Borough Authority

¹ The time of service is relevant because discovery served after noon on a Friday is deemed to have been served on the following business day for purposes of tracking due dates, pursuant to the Prehearing Conference Order issued on April 18, 2019.

² OCA Set V contained 27 questions directed to Steelton Borough Authority. It was the first and only set served by the OCA to the Authority, to date.

On May 3, 2019, the OCA contacted counsel for Steelton Borough Authority to request responses to OCA-V-1, V-2 and a third interrogatory³ that the Authority did not answer because the OCA referenced the “Borough” in the question rather than the “Steelton Borough Authority.” Counsel for the OCA pointed out that the Instructions attached to Set V defined “Borough” as “Steelton Borough Authority.”⁴ In response, Counsel for the Authority indicated that OCA-V-1 and OCA-V-22 would be answered by Monday and that the Authority might object to V-2. The OCA followed up with the Authority’s counsel again on May 3 and May 7, 2019. On May 7, counsel for the Authority provided a response to OCA-V-1. On May 8, counsel for the Authority provided a response to OCA-V-22 and orally communicated that the Authority would object to OCA-V-2. Later the same day, the Authority filed written objections.⁵

Pursuant to the April 18, 2019 Prehearing Conference Order, written objections were due within three calendar days of service of the interrogatories. As noted above, the interrogatories were electronically served to the counsel for the Steelton Borough Authority on April 19, 2019 at 12:06 p.m. Written objections were due within three days, or by April 25, 2019. The written objection was filed on May 8, 2019, nineteen days after the interrogatory was served to the Authority.⁶ Thus, as a matter of procedure, the objection is untimely. On this basis, the objection should be denied.⁷

³ OCA Set V-22.

⁴ The complete Instructions attached to OCA Set-V are provided in Appendix A to this Motion.

⁵ The Authority’s Objection is attached as Appendix B to this Motion.

⁶ The OCA emphasizes the length of time that has passed because this is a proceeding filed under Section 1329 of the Public Utility Code where the schedule is so compressed that the OCA’s Direct Testimony is due in two weeks.

⁷ In the New Garden acquisition proceeding, filed under Section 1329 of the Public Utility Code, ALJ Haas granted the OCA’s Motion to Compel the Authority to provide, *inter alia*, all proposals received by the Authority for the proposed sale of the sewer system because the objections were untimely filed. Docket No. A-2016-2580061, Tr. 13-17 (Feb. 16, 2017).

B. Substantive Basis for Directing the Answering of OCA Set V-2

Steelton Borough Authority objects to OCA-V-2 on the grounds that the proposals received from potential buyers (other than PAWC) are not relevant to the subject matter of this proceeding because they were not accepted and, therefore, unrelated to the Commission's review of the proposed acquisition under Section 1102(a), 66 Pa. C.S. § 1102(a). Objections at 1-2. This is incorrect and the Authority's objection should be rejected for several reasons.

First, the scope of discovery under 52 Pa. Code § 5.321(c) is broad.⁸ The proposals submitted by other potential buyers are relevant to review the proposed valuation studies that the Authority and PAWC have submitted in support of the request for approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329(c)(2).

Second, the proposals are subject to the Pennsylvania Right to Know Law. 65 Pa. C.S. 67.101, *et seq.* The Authority acknowledges this in Section XII of its Request for Proposals for the purchase of its water system assets,⁹ wherein it states:

Proposers should be aware that records of the Seller are subject to the provisions of the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 *et seq.*

...

Proposers are advised, however, that following award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by Proposers that constitute "trade secrets" or "confidential proprietary information" as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. § 67.708(b)(11). "Confidential proprietary information" includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the

⁸ *Pa. P.U.C. v. Equitable Gas Co.*, 61 PaPUC 468, 477 (1986) ("We believe that the relevancy test should be liberally applied when considering discovery requests").

⁹ The Authority's Request for Proposals is posted on the Steelton Borough website. <http://www.steeltonpa.com/notices/advertisement-steelton-borough-authority-request-proposals-rfp-purchase-water-system-related-assets/>.

person who submitted the information. Proposers are advised that if they believe any information being submitted in response to this request for proposal RFP constitutes or references trade secret or confidential proprietary information, they should clearly label any such information with a prominent label of either: "TRADE SECRET" or "CONFIDENTIAL PROPRIETARY INFORMATION." Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If the Seller, the Pennsylvania Office of Open Records, or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure.

The Authority did not assert that the proposals contain confidential proprietary information; it objected on the basis of relevance only. Objection at 1-2. To the extent that confidentiality is a concern, however, the Authority can choose to provide the proposals under confidential cover.¹⁰ See Objection at 2 (noting that PAWC designated its bid as confidential when it provided the document in response to OCA discovery).

In further support of directing the production of the proposals, some material information from the proposals is already publicly available. For example, Steelton Borough has posted a spreadsheet on its website that identifies the entities that submitted proposals and specifies the amount of the bids.¹¹ The Borough has also posted logs summarizing comments made at two public meetings by representatives of one of the bidders (not PAWC), regarding the bidder's written proposal.¹² The logs refer to additional detail that is contained in the written proposals but not discussed (or not summarized) during the public meetings. Without seeing the proposals themselves, however, the OCA does not have access to that information or other information regarding the valuation of the system by the other entities.

¹⁰ Any party may challenge the confidential designation.

¹¹ http://www.steeltonpa.com/wp-content/uploads/2018/07/Proposal_Results.pdf

¹² http://www.steeltonpa.com/wp-content/uploads/2018/08/Public_Comments_2018-08-13.pdf;
http://www.steeltonpa.com/wp-content/uploads/2018/08/2018-08-16_Public_Input_Minutes.pdf

For all of the reasons above, the OCA moves to compel the Steelton Borough Authority to respond to OCA Set V, question 2. Due to the abbreviated schedule for litigation, and the substantial amount of time that has passed since the OCA served the Steelton Borough Authority with its request for the proposals, the OCA requests that the Presiding Officers direct the Authority to answer the questions at issue within two days of the granting of the OCA's Motion to Compel.

III. CONCLUSION

For the foregoing reasons, the OCA's requests for information in OCA Set V, Question 2 is relevant and reasonable. The OCA respectfully requests that the Presiding Officers grant the OCA's request for relief in this matter.

Respectfully submitted,



Erin L. Gannon
Senior Assistant Consumer Advocate
Pa. Attorney No. 83487
EGannon@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
Pa. Attorney No. 50026
CHoover@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
Pa. Attorney No. 320580
HBreitman@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: May 10, 2019
271933

Appendix A
OCA Set V – Instructions

Instructions

- 1) These interrogatories shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.
- 2) Restate the interrogatory immediately preceding each response.
- 3) Identify the name, title, and business address of each person(s) providing each response.
- 4) Provide the date on which the response was created.
- 5) Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term “Steelton Borough Authority”, “Steelton”, “Borough” “Authority” or “you” as used herein includes Steelton Borough Authority, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Steelton Borough Authority has the right to compel the action requested herein.
- 6) Provide a verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.
- 7) As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word “document” or “workpaper” includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:
 - a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
 - b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
 - c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.



100 First Street • PO Box 1100 • Harrisburg, PA 17104-1100
Tel: 717.237.9400 • Fax: 717.237.4100

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@meneeslaw.com

May 8, 2019

Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

VIA EMAIL AND FIRST CLASS MAIL

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 water system assets of the Steelton Borough Authority, related water service rights, fair market valuation ratemaking treatment, deferral of the post-acquisition improvement costs, and certain contracts with municipal corporations; Docket No. A-2019-3006880, et al.

Dear Ms. Gannon:

Attached please find the Steelton Borough Authority Objections to Office of Consumer Advocate's Interrogatories – Set V, in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to the Steelton Borough Authority

c: Certificate of Service
Secretary Rosemary Chiavetta (Transmittal Letter and Certificate of Service only)

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Frederick, MD • Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Susan Simms Marsh, Esq.
Elizabeth Rose Triscari, Esq.
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA, 17055
susan.marsh@amwater.com
Elizabeth.Triscari@amwater.com

Scott B. Granger, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17105-3265
sgranger@pa.gov

Christine M. Hoover, Esq.
Erin L. Gannon, Esq.
Harrison W. Breitman, Esq.
Ashley E. Everette, Consultant
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
CHoover@paoca.org
EGannon@paoca.org
HBreitman@paoca.org
AEverette@paoca.org

Erin K. Fure, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
efure@pa.gov



Adeolu A. Bakare

Counsel to the Steelton Borough Authority

Dated this 8th day of May, 2019, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application and related filings of Pennsylvania- :
American Water Company under Sections 507, : Docket No. A-2019-3006880, *et al.*
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 :
ratemaking treatment, deferral of the post- :
acquisition improvement costs, and certain :
contracts with municipal corporations. :

**STEELTON BOROUGH AUTHORITY OBJECTIONS TO
OFFICE OF CONSUMER ADVOCATE'S INTERROGATORIES – SET V**

Pursuant to 52 Pa. Code §§ 5.342(c) and (e), the Steelton Borough Authority (the "Authority") hereby objects to the Interrogatories served by the Office of Consumer Advocate ("OCA") on April 22, 2019 ("Set V") as follows:

OCA, Set V, Request No. 2

Please provide a copy of all proposals received by the Borough and any accompanying exhibits with respect to the proposed sale of the water system.

Objection to Request No. 2

Per Section 5.321(c) of the Commission's regulations, 52 Pa. Code § 5.321(c), a party may obtain discovery of any matter that is relevant to the subject matter and issues in the proceeding, and thus reasonably calculated to lead to the discovery of admissible evidence. Accordingly, the Authority objects to OCA's Set V, Request No. 2 on grounds of relevancy

OCA Set V, No. 2 requests copies of all proposals received by the "Borough" with requests to the proposed sale of the water system.¹ The proposal received from PAWC was already confidentially provided by PAWC in response to OCA Set I, No. 1. Any proposals received from other parties are not relevant to the Commission's review of the proposed transaction, which involves solely PAWC's proposal to purchase the water system assets owned by the Steelton Borough Authority. PAWC filed the Application pursuant to Section 1102(a) of the Public Utility Code, which *inter alia* authorizes the Commission to review transfers of public utility property from municipal corporations to regulated public utilities. Accordingly, the Commission has jurisdiction to review the proposed transaction between the Authority and PAWC. The Commission does not have jurisdiction over the Authority's review of proposals and selection of a winning proposer. Therefore, the request for production of any proposals received from other proposers is not reasonably calculated to lead to discovery of admissible evidence and therefore outside the scope of permissible discovery. *See* 52 Pa. Code § 5.231(c).

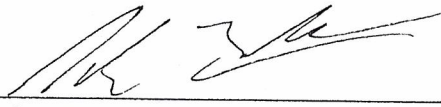
¹ The instructions attached to OCA's Set V interrogatories defined the terms "Steelton Borough Authority", "Steelton", "Borough", "Authority", or "you" as synonymous with Steelton Borough Authority.

CONCLUSION

WHEREFORE, the Authority hereby objects to OCA Set V, Request No. 2.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By  _____

Kathy L. Pape (Pa. I.D. 28027)
Adeolu A. Bakare (Pa. I.D. 208541)
Alessandra L. Hylander (Pa. I.D. 320967)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
kpape@mceeslaw.com
abakare@mceeslaw.com
ahylander@mceeslaw.com

Counsel to the Steelton Borough Authority

Dated: May 8, 2019

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 :
the Water Assets of 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 Motion to Compel Answers to OCA Set V, Question 2, 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 10th day of May 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

Erin K. Fure, Esquire
Assistant 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
852 Wesley Drive
Mechanicsburg, PA 17055

/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

PA Attorney I.D. # 50026

E-Mail: CHoover@paoca.org

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

*271962