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May 13, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**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 Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Answer of the Steelton Borough Authority to the Office of Consumer Advocate's Motion to Compel Answer to OCA Set V, Question 2 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: Administrative Law Judge Stephen K. Haas (via E-Mail and First-Class Mail)  
Administrative Law Judge Benjamin J. Myers (via E-Mail and First-Class Mail)  
Certificate of Service

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## 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).

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Adeolu A. Bakare

Counsel to the Steelton Borough Authority

Dated this 13<sup>th</sup> 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. :

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

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES STEPHEN K. HAAS AND  
BENJAMIN J. MYERS:

Steelton Borough Authority (the "Authority") files, pursuant to section 5.342(g)(1) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Rules,<sup>1</sup> this Answer to the Office of Consumer Advocate's Motion to Compel Answer to OCA Set V, Question 2 ("Motion"), filed by the Office of Consumer Advocate ("OCA") on May 10, 2019.

**I. SUMMARY**

**A. The Procedural and Substantive Arguments in OCA's Motion to Compel Should be Rejected**

OCA asks the presiding Administrative Law Judges ("ALJs") to grant its Motion on procedural and substantive grounds, but fails to state a compelling basis for either. OCA's procedural argument alleges that the Authority submitted an untimely objection, but largely ignores the Authority's submission of timely responses to all of the Set V interrogatories on April

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<sup>1</sup> 52 Pa. Code § 5.342(g)(1).

29, 2019. The Authority submitted the May 8, 2019 Objection in response to OCA's May 3, 2019 oral request for the Authority to answer the OCA Set II, Interrogatory No. 2 consistent with OCA's Discovery Instruction No. 5. As discussed below, the Authority never agreed to OCA's Discovery Instruction No. 5 and further submits that the instruction cannot logically be followed. Under these circumstances and considering that the Authority has responded or assisted with Pennsylvania-American Water Company's ("PAWC") responses to more than 75 interrogatories, it is reasonable and in the public interest for the presiding ALJs to deny OCA's procedural argument and assess the merits of the Authority's objection.

On the merits, OCA's Motion offers no basis for the requested discovery. The Commission requires regulated utilities to obtain Certificates of Public Convenience to acquire public utility assets, which are issued only upon review and approval of the proposed asset transfer. *See* 66 Pa C.S. § 1101(a); *see also* 66 Pa C.S. §§ 1329, *et seq.* Unlike the Commission's Provider of Last Resort ("POLR") statute applicable to electric utilities, Sections 1101(a) and 1329 of the Public Utility Code ("Code") limit the Commission's review to the proposed transaction rather than the bidding process preceding an agreed-upon transaction between the buyer and seller parties. Accordingly, proposals from other potential sellers are not reasonably calculated to lead to discovery of admissible evidence and are not relevant to the Commission's review of the proposed transaction between the Authority and PAWC. *See* 52 Pa. Code § 5.321(c).

## **II. ANSWER AND ARGUMENT**

### **A. OCA's Procedural Arguments Should be Rejected**

OCA argues that the Authority's objections are untimely because the Authority submitted the objections on May 8, 2019, in response to interrogatories served on April 19, 2019. This argument overlooks multiple intervening events and must be rejected.

As noted above, OCA submitted its Set V Interrogatories to the Authority on April 19, 2019. Pursuant to the discovery rules set by the Prehearing Order issued on April 18, 2019, the Set V Interrogatories were effectively served on April 22, 2019, with response due 5 business days later on April 29, 2019.

In accordance with the Prehearing Order, the Authority served responses to all 27 of OCA's Set V interrogatories on Monday, April 29, 2019, in addition to responding to 14 Set IV Interrogatories. On Friday, May 3 2019, counsel for OCA contacted counsel for the Authority to discuss concerns with OCA's Discovery Instruction No. 5. OCA noted that Discovery Instruction No. 5 defines all references to the "Authority," "Steelton," or "Borough" to mean the "Steelton Borough Authority." Counsel for the Authority advised that the Authority and the Borough of Steelton are separate entities. Regardless, counsel for OCA requested that the Authority respond to Set V Nos. 1, 2, and 22 as if directed towards the Authority rather than Steelton Borough. At that time, counsel for the Authority advised that the Authority would be willing to respond to Nos. 1 and 22 as requested, but that the Authority may object to No. 2.<sup>2</sup>

In assessing the impact of OCA's May 3, 2019, request for compliance with Discovery Instruction No. 5, the ALJs should consider that the Commission's Regulations provide no authority for enforcement of Discovery Instructions. Nevertheless, the Authority made every

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<sup>2</sup> OCA's Motion to Compel states that Steelton provided oral notice of the objection on May 8, 2019. As set forth above, Steelton provided oral notice of the objection on May 3, 2019.

effort to do so as evidenced by the revised responses to OCA Set V, Nos. 1 and 22 provided shortly after the May 3 discussion. As the Commission's Regulations governing discovery provide no guidance or procedures for enforcement of Discovery Instructions, the Authority submits that the objection propounded after the May 3 discussion with OCA is reasonable and appropriate.

Alternatively, the circumstances presented here merit waiver of any procedural defects. In light of the accelerated timeframe of this proceeding, the efforts of all parties to minimize discovery disputes, and the fundamental principle that discovery be limited to relevant information, the Authority submits that the ALJs should overlook any procedural defects and address the merits of the Authority's objection. *See* 52 Pa. Code § 1.2; *see also* 52 Pa. Code § 5.43.

**B. OCA's Substantive Arguments Should be Rejected**

OCA's substantive arguments consist of: (1) a claim that proposals from entities other than PAWC are relevant to its assessment of the valuation studies submitted by PAWC and the Authority; and (2) an argument that the material requested is subject to Pennsylvania's Right to Know Law. OCA's first claim is unsupported while the second is entirely immaterial to the Authority's stated objection. Therefore, OCA's Motion should be denied.

To support its argument that proposals from other non-PAWC entities are relevant to its review of the valuation studies prepared by PAWC's and the Authority's utility valuation engineers, OCA relies primarily on Section 1329(c)(2) of the Code. Section 1329(c)(2) confirms that the rate base adjustment granted to the buyer shall be the lower of the negotiated purchase price or the "fair market value" defined therein as the average of the valuations developed by the PUC-approved valuation engineers retained the seller and buyer. *See* 66 Pa. C.S. § 1329(c)(2).

Nothing in the cited statute indicates that proposals declined by the buyer have any bearing on this analysis. By way of contrast, when the General Assembly intended to expand the Commission's jurisdiction to include review of proposals for POLR electric supply service, the statute unambiguously stated "[t]he electric power acquired shall be procured through competitive procurement processes... ." See 66 Pa. C.S. § 2807(e)(3.1). Here, where the statute grants the Commission more limited authority to review only the proposed transaction between a selected buyer and the seller, discovery requests for any proposals from other potential buyers is not relevant to the subject matter at hand.

OCA's further attempt to justify the requested discovery by citing a prior Commission ruling favoring liberal application of the relevancy test should also be rejected. OCA's Motion correctly recounts the Commission's determination in *Pa. P.U.C. v. Equitable Gas Co.*, 61 PaPUC 468, 477 (1986), that "the relevancy test should be liberally applied when considering discovery requests." See Motion, at 4, n. 8. However, the Commission in *Equitable* addressed a rather extreme assertion that historical purchased gas cost data from the years 1981-1982 is not relevant to the Commission's review of purchased gas cost for the 1983-1984 period. See *Equitable*, \*20, \*22. In the *Equitable* case, the Commission sought to forcefully dispel the premise that discovery is limited to current operations and reinforce parties' ability to inquire into historical data. However the liberal application endorsed by the Commission in this extreme example does not extend the reach of discovery to information outside the scope of statutory authority granted by the Code. Here, where the General Assembly has directed the Commission to review a transaction to ascertain fair market value based on a negotiated purchase price and the buyer and seller asset valuations, liberal discovery principles do not support extending discovery to proposals from potential buyers.

Finally, OCA's argument suggesting that the standards of the Pennsylvania Right-to-Know Law ("RTK Law") should inform the Commission's disposition of a relevancy question is a *non sequitur*. Even if true, the fact that information may be subject to disclosure under the RTK Law would be immaterial to the relevancy standard set forth in *See* 52 Pa. Code § 5.321(c).

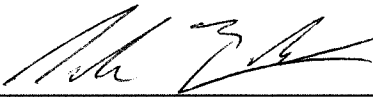
### III. CONCLUSION

WHEREFORE, the Authority respectfully requests that Your Honors deny OCA's Motion to Compel.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By



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Dated: May 13, 2019