

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 20, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing, please find a Notice to Plead and the Petition of the Office of Consumer Advocate for Certification of a Discovery Ruling for Interlocutory Review in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

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

Enclosures:

cc: Honorable Steven K. Haas
Honorable Benjamin J. Myers
Certificate of Service
*272695

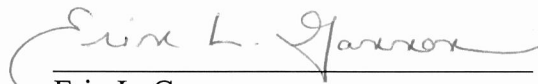
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 :

NOTICE TO PLEAD

You are hereby advised that, pursuant to 52 Pa. Code § 5.304(d), you may file a responsive brief within seven (7) days after the date of service of the attached Petition. Your responsive brief should be filed with the Secretary of the Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120. A copy should also be served on the undersigned counsel, the Presiding Officers and all other parties.

Respectfully submitted,



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Dated: May 20, 2019
272661

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 :

PETITION OF THE OFFICE OF CONSUMER ADVOCATE FOR CERTIFICATION OF A
DISCOVERY RULING FOR INTERLOCUTORY REVIEW

To Administrative Law Judge Steven K. Haas and Benjamin J. Myers:

The Office of Consumer Advocate (OCA) hereby petitions Administrative Law Judges Steven K. Haas and Benjamin J. Myers (ALJs), pursuant to 52 Pa. Code § 5.304 for certification of the discovery question presented below for interlocutory review by the Pennsylvania Public Utility Commission (PUC or Commission).

The OCA respectfully requests that the ALJ certify the following question for review by the Commission:

Should a selling utility in an acquisition proceeding filed under Sections 1102 and 1329 of the Public Utility Code be required to provide the responses to its Request(s) for Proposals for the sale of the utility assets, which have been declined or not otherwise accepted?

The Office of Consumer Advocate respectfully submits that the proposals received by the selling utility are relevant or reasonably calculated to lead to the discovery of evidence relevant to the investigation and review of the proposed transaction under 66 Pa. C.S. §§ 1102, 1103 and 1329.

The ALJs concluded that the proposals received by the municipal authority for the sale of its utility assets, which were not accepted, are not relevant and would not lead to any evidence relevant to any analysis that the Presiding Officers are charged with conducting under Section

1329. The ALJs accepted the argument by Steelton Borough Authority (Authority or Steelton) that there is no basis in Section 1329(c)(2) for the Commission to consider proposals by potential buyers because the Commission only has authority to review the proposed transaction and not the bidding process preceding the proposed transaction. Order at 9 and note 2; Steelton Answer at 2. The OCA respectfully disagrees with this reasoning and conclusion. The OCA is not seeking Commission review of the bidding process. The OCA's discovery is tailored to the proposals received by the selling utility.¹ The proposals are relevant or reasonably calculated to lead to the discovery of evidence relevant to review of the proposed transaction under Sections 1329, 1102 and 1103(a) of the Public Utility Code because they may give helpful context to the Application.

For example, the proposals may contain plans for incorporating the acquired system into the bidders' operations and commitments regarding capital projects and rates, *e.g.*, rate freezes and future rate increases. This information is relevant or reasonably calculated to lead to the discovery of evidence relevant to the PUC's determination whether terms of the proposed transaction are reasonable and provide substantial affirmative benefits under Sections 1102 and 1103.² What other entities bid in a fair and competitive process is also relevant or reasonably calculated to lead to the discovery of evidence relevant to the Commission's review of the claimed ratemaking rate base under Section 1329. How other utilities value the seller's utility assets and their proposals for future investment give context to the appraisals and adjusted appraisal results.³

¹ OCA-V-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."

² The PUC's charge in this proceeding is to "weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit" under Sections 1102 and 1103. McCloskey v. Pa. PUC, 1624 C.D. 2017, Order at 22 (Oct. 11, 2018); Application of Aqua PA Wastewater, Inc., A-2016-2580061, Order at 13 (June 29, 2017) (New Garden) (quoting City of York v. Pa. PUC, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972)).

³ The Commission has determined that Section 1329 permits the PUC and parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the Utility Valuation Experts (UVE), which are submitted to support the claimed fair market value. In its Order on Reconsideration in New Garden, the Commission stated:

On its face, Section 1329 does not directly address the process by which compliance with the USPAP, which utilizes the three required methods of evaluation, is determined. However, when

The scope of discovery in proceedings before the Public Utility Commission is broad. See 52 Pa. Code § 5.321; Pa. PUC v. Equitable Gas Co., 61 PaPUC 468, 477 (1986) (“We believe that the relevancy test should be liberally applied when considering discovery requests”). For the reasons discussed above, the information sought by the OCA is relevant or reasonably calculated to lead to the discovery of relevant, admissible evidence.⁴

Interlocutory review of the discovery issue explained above should be granted because it involves a novel issue of law under a new statute, which should be resolved immediately by the Commission so that the Office of Consumer Advocate and other stakeholders have adequate information necessary for the complete investigation, analysis and development of recommendations in this proceeding – and in pending and future proceedings where the same issue will arise – in a timely manner.

Respectfully submitted,



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Dated: May 20, 2019

construing Section 1329 in conjunction with both Section 505 and Section 1103(b) of the Code, it is clear that the Commission retains the authority to review and analyze the UVE evaluations to determine compliance with the USPAP standards and whether the three methods were accurately applied to the UVEs’ analyses.

New Garden, Order at 8 (Oct. 5, 2017) (citing the June 2017 Order at 34).

⁴ The ALJs also found that the fact that the other proposals may be obtainable through the Right to Know Law or that some of the information in the other proposals is already publicly available has no bearing on the relevancy of the information. Order at 9. The OCA respectfully submits that the ALJs miscomprehend the OCA’s argument. The OCA raised these matters to show that confidentiality is not an obstacle to production of the proposals by the Authority. OCA Motion at 5. Section 5.321(c) of the Public Utility Code states that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Further, the fact that some of the information in the proposals is publicly-available does not address the need for authentication and verification of that information, which is addressed by the discovery process. 52 Pa. Code §§ 1.36, 5.342(a)(6).

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 documents, a Notice to Plead and the Petition of the Office of Consumer Advocate for Certification of a Discovery Ruling for Interlocutory Review, 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 20th day of May 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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