

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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

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

May 28, 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 the Office of Consumer Advocate Brief Supporting Certification in the above-referenced proceeding.

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
*273241

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 Brief Supporting Certification, 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 28th 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

Susan Simms Marsh, Esquire
Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

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

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720T
St. Louis, MO 63105

/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

*273240

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 :

BRIEF OF THE OFFICE OF CONSUMER ADVOCATE
SUPPORTING CERTIFICATION

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
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: May 28, 2019

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. DISCOVERY QUESTION FOR WHICH CERTIFICATION IS REQUESTED.....	1
III. STATEMENT OF THE CASE.....	2
IV. SUMMARY OF ARGUMENT.....	4
V. ARGUMENT	6
A. Interlocutory Review Will Prevent Substantial Prejudice	7
B. Stay of the Proceedings Is Required	9
C. The Proposals to Acquire the Municipal Seller’s System Are Relevant to the Commission’s Charge in This Proceeding and Should Be Discoverable.	10
VI. CONCLUSION	13

APPENDIX A: OCA Set V Instructions

APPENDIX B: Objection by Steelton Borough Authority

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>City of York v. Pa. PUC,</u> 449 Pa. 136, 141, 295 A.2d 825, 828 (1972)	10
<u>McCloskey v. Pa. PUC,</u> 1624 C.D. 2017, Order at 22 (Oct. 11, 2018)	7, 10
 Administrative Decisions	
<u>Application of Aqua PA Wastewater, Inc., A-2016-2580061,</u> Order (June 29, 2017)	7, 10
<u>Application of Aqua PA Wastewater, Inc., A-2016-2580061,</u> Order (Oct. 5, 2017)	10
<u>Application of Knights Limousine Service, Inc.,</u> 59 Pa. PUC 538 (1985)	6-7
<u>Pa. PUC v. CS Water and Sewer Assoc.,</u> 74 Pa. PUC 716 (1991)	6-7
<u>Pa. PUC v. Dauphin Consolidated Water Supply Co.,</u> 1987 Pa. PUC LEXIS 215	6, 8
<u>Pa. PUC v. Equitable Gas Co.,</u> 61 Pa. PUC 468 (1986)	12
<u>Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale</u> <u>Operations,</u> 2000 Pa. PUC LEXIS 49	6
 Statutes	
66 Pa. C.S. § 331	6
66 Pa. C.S. § 331(e)	6
66 Pa. C.S. § 507	2
66 Pa. C.S. § 1102	<i>passim</i>

66 Pa. C.S. § 1102(a)	4
66 Pa. C.S. § 1103.....	<i>passim</i>
66 Pa. C.S. § 1103(b)	10
66 Pa. C.S. § 1329.....	<i>passim</i>
66 Pa. C.S. § 1329(c)(2).....	2, 10
66 Pa. C.S. § 1329(d)(2)	5, 7

Regulations

52 Pa. Code § 1.36	12
52 Pa. Code §§ 5.302-5.304.....	6
52 Pa. Code § 5.304	4
52 Pa. Code § 5.304(b)	1, 6
52 Pa. Code § 5.304(d)	1
52 Pa. Code § 5.321	12
52 Pa. Code § 5.321(c).....	8
52 Pa. Code § 5.342(a)(6).....	12

I. INTRODUCTION

Section 5.304(b) of the Commission’s rules and regulations provides that “A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.” 52 Pa. Code § 5.304(b). On May 20, 2019, the Office of Consumer Advocate (OCA) filed a Petition seeking Certification of the Presiding Officer’s denial of the OCA’s Motion to Compel the Steelton Borough Authority (Authority) to respond to OCA-V-2.¹ This interrogatory requested the Authority to provide a copy of all proposals that it received in response to its proposed sale of its water system. The proposal by Pennsylvania-American Water Company (PAWC), which was accepted, was provided in response to discovery under confidential cover.² The proposals at issue, therefore, are those that were not accepted by the Authority.

Section 5.304(d) provides that parties may file a brief in response to a request for certification. 52 Pa. Code § 5.304(d). Pursuant to this regulation, the OCA submits this Brief in support of certification of discovery matter for interlocutory review by the Public Utility Commission (PUC or Commission).

II. DISCOVERY QUESTION FOR WHICH CERTIFICATION IS REQUESTED

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?

Suggested answer in the affirmative.

¹ Order Denying Motion to Compel (issued May 15, 2019).

² PAWC response to OCA-I-1.

III. STATEMENT OF THE CASE

On January 2, 2019, Pennsylvania-American Water Company filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Commission approval, *inter alia*, of the acquisition of the Steelton Borough Authority water system, the right of PAWC to provide water service in the areas served by the Authority, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. The Authority filed a Petition to Intervene on January 22, 2019. The OCA filed a Protest and Public Statement on February 5, 2019. By Secretarial Letter dated April 16, 2019, the Commission informed PAWC that it had accepted the Application for filing. On April 18, 2019, Administrative Law Judges Steven K. Haas and Benjamin J. Myers (ALJs) issued a Prehearing Conference Order, which modified the Commission's regulations pertaining to the timing of discovery because of the statutory six-month deadline for final Commission action in this proceeding.³ The ALJs also set a deadline of July 12, 2019 for the filing of reply briefs and indicated that they would issue a Recommended Decision by August 9, 2019 and that the last Public Meeting for the Commission to act on the Application is October 3, 2019.⁴

The OCA served the interrogatory at issue on Friday, April 19, 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.

³ Prehearing Conference Order at 4.

⁴ Prehearing Conference Order at 2-3.

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 Authority's 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-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

On May 3, 2019, the OCA contacted counsel for Steelton Borough Authority to request responses to OCA-V-1, V-2 and a third interrogatory⁵ 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."⁶ 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, 2019, counsel for the Authority provided a response to OCA-V-1. On May 8, 2019, counsel for the

⁵ OCA-V-22.

⁶ The complete Instructions attached to OCA Set V are provided in Appendix A to this Brief.

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.⁷

On May 10, 2018, the OCA timely filed a Motion to Compel the Authority's production of the proposals requested in OCA-V-2. The OCA disagreed with the Authority's contention that the proposals are unrelated to the Commission's review of the proposed acquisition under Section 1102(a) and argued that they are relevant under Section 1329.⁸ On May 13, 2019, the Authority filed an Answer opposing the Motion. On May 15, 2019, the ALJs issued an Order denying the OCA's Motion. 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 1329.⁹

On May 20, 2019, the OCA timely filed a Petition for Certification of a Discovery Ruling for Interlocutory Review, pursuant to 52 Pa. Code § 5.304. On May 22, 2019, the OCA served its Direct Testimony in this proceeding. The OCA now submits this Brief in support of certification of the discovery question to the Commission for interlocutory review.

IV. SUMMARY OF ARGUMENT

The OCA respectfully submits that the proposals received by the selling municipal utility, here the Steelton Borough Authority, are relevant or reasonably calculated to lead to the discovery of evidence relevant to the analysis that the Presiding Officers and Commission are charged with

⁷ The Authority's Objection is attached as Appendix B to this Brief.

⁸ OCA Motion to Compel at 4-5. The OCA also argued that the Authority's written objection was untimely because it was filed nineteen days after the interrogatory was served to the Authority.

⁹ The ALJs also dismissed the OCA's argument that the Authority's written objection to OCA-V-2 should be deemed untimely. Order at 5-7.

conducting under Sections 1102, 1103 and 1329 of the Public Utility Code. 66 Pa. C.S. §§ 1102, 1103, 1329. They are relevant, or may lead to the discovery of admissible evidence, because the proposals contain information regarding, *inter alia*: (1) the type and cost of capital projects that other entities projected for providing service to the seller's system, (2) plans for incorporating the acquired system into other potential bidders' operations and (3) how other potential buyers valued the system. This information may assist the Commission and other parties to evaluate whether the terms of the proposed transaction are reasonable and provide substantial affirmative benefits under Sections 1102 and 1103.

Further, there is a six-month statutory deadline for Commission action in this proceeding. 66 Pa. C.S. § 1329(d)(2). As a result, if the Commission does not review the discovery issue until the ALJs issue their Initial Decision, it is not clear that there will be any opportunity for the requested information to be included in the evidentiary record or to determine whether there is additional discovery that may lead to admissible evidence. In addition, the OCA has requested, and received, the same information in all proceedings filed under Section 1329 to date and has or will request the same information in pending proceedings.¹⁰ As such, interlocutory review will prevent substantial prejudice and expedite the conduct of this proceeding and pending proceedings before the Commission. While the OCA recommends a stay of this proceeding to allow time for information obtained from the proposals in the evidentiary record and the recommendations considered by the Commission, a stay may not be possible. This provides further support for interlocutory review so that substantial prejudice can be avoided in other Application proceedings where the same discovery question is presented.

¹⁰ See *infra* note 15.

V. ARGUMENT

The standard for certification of a discovery ruling for interlocutory review is whether the ruling “involves an important question of law or policy that should be resolved immediately by the Commission.”¹¹ 52 Pa. Code § 5.304(b). This standard is met where the discovery ruling involves compelling circumstances that cannot be remedied in the normal course of Commission review after an initial decision is issued. See Pa. PUC v. Dauphin Consolidated Water Supply Co., 1987 Pa. PUC LEXIS 215 (DCWSC). As the Commission has explained:

In order that we make ourselves perfectly clear, the correctness or erroneousness of the ALJ's ruling on admissibility is not a relevant consideration, either initially in considering a request for certification of a question (except to the extent that such arguments might persuade the ALJ to reverse his or her ruling), or later in considering whether interlocutory review is warranted. The pertinent consideration in both instances is whether interlocutory review is necessary, in order to prevent substantial prejudice, that is that the error and any prejudice flowing therefrom, could not be satisfactorily cured during the normal Commission review process. In this instance, if upon our normal review of the ALJ's decision and based upon the entire record, we find that the ALJ's ruling excluding the testimony and exhibit proffered by the Respondent constitutes prejudicial error, we shall take appropriate action to cure that error.

Id. at *6-7, citing Shea v. Freeport Telephone and Telegraph, Docket No. C-812580, Order (Feb. 15, 1984) (emphasis in original). The Commission has stated that compelling reasons may be demonstrated, for example, by showing that without interlocutory review some harm would result “which would not be reparable through normal avenues, that the relief sought should be granted now rather than later, or that granting interlocutory review would ‘prevent substantial prejudice or expedite the proceeding.’” Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, 2000 Pa. PUC LEXIS 49, *7; 52 Pa. Code §§ 5.302-5.304; see also

¹¹ Section 331 of the Public Utility Code permits a presiding officer to certify a question for interlocutory review by the Commission “where he finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding.” 66 Pa. C.S. § 331(e).

Application of Knights Limousine Service, Inc., 59 Pa. PUC 538 (1985); Pa. PUC v. CS Water and Sewer Assoc., 74 Pa. PUC 716 (1991).

Here, the discovery matter at issue involves a novel issue of law under a new statute, which is likely to be repeated in other pending cases being litigated under the same, abbreviated, statutory deadline, and that, without the requested information, the OCA and other stakeholders may not have adequate information to fully investigate, analyze and develop recommendations under Sections 1102, 1103 and 1329 of the Public Utility Code. 66 Pa. C.S. §§ 1102, 1103, 1329.

A. Interlocutory Review Will Prevent Substantial Prejudice

The OCA submits that interlocutory review of the discovery ruling will prevent substantial prejudice and expedite the conduct of the proceedings. The Commission has determined that it will take final action on Applications filed under Sections 1102 and 1329 of the Public Utility Code within six months of acceptance of the filing.¹² Due to the abbreviated nature of this proceeding, the OCA has already served its Direct Testimony and Rebuttal Testimony is due in two days. Evidentiary hearings are scheduled for June 10, 2019, a Recommended Decision is expected by August 9, 2019, and the last scheduled Public Meeting prior to the six-month deadline is October 3, 2019.¹³ Thus, in order for the OCA or other parties to have the opportunity to submit information from (or obtained as a result of) the requested proposals into the evidentiary record and for the Commission to consider that information and any recommendations based thereon, it is necessary for the Commission to rule as soon as possible.

¹² 66 Pa. C.S. § 1329(d)(2); Application of Aqua PA Wastewater, Inc., A-2016-2580061, Order at 4 (June 29, 2017) (New Garden), affirmed by McCloskey v. Pa. PUC, 1624 C.D. 2017, Order at 26, n. 15 (Oct. 11, 2018) (McCloskey). In McCloskey, the Commonwealth Court affirmed the Commission's discretion to apply the six-month time limitation associated with Section 1329 to its determination whether there is a substantial, affirmative public benefit under Section 1102.

¹³ Prehearing Conference Order at 3.

If the Commission waited to review the discovery matter until the “normal course” of Commission review, *i.e.* after an initial decision is issued, it does not appear that there will be any opportunity for the requested information, or evidence derived from the requested information, to be included in the evidentiary record or for the parties to make any recommendations in response to the evidence, given that the Commission will conclude its review of the Application under Sections 1102 and 1329 within six-months.¹⁴

Further, if the discovery question is certified and the municipal seller is required to provide the proposals, if the OCA attempted to introduce evidence from (or obtained as a result of) the proposals that the seller or buyer believe to involve anything beyond the scope of the proceeding, they can object to the admission of that evidence. See DCWSC, at *9; 52 Pa. Code § 5.321(c) (“It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”). Thus, while the parties reviewing the Application would be prejudiced if the municipal seller is not required to provide the proposals, there is no prejudice to the Applicants if the seller provides the proposals because they will retain the ability to object to the admission of evidence obtained from the proposals.

Finally, in addition to preventing prejudice in this proceeding, immediate review by the Commission could expedite other pending Application proceedings filed under Sections 1102 and 1329.¹⁵ Resolution of the discovery issue here could avoid similar dispute and pleadings that would divert the resources of the parties, Presiding Officers and the Commission away from the orderly conduct of those proceedings, which are subject to the same abbreviated schedule.

¹⁴ See *supra* note 12 and accompanying text.

¹⁵ Currently, there are two such proceedings pending. Application of Pennsylvania-American Water Co., A-2018-3004933 (Exeter); Application of Aqua Pennsylvania, Inc., A-2019-3008491 (Cheltenham).

B. Stay of the Proceedings Is Required

The OCA submits that stay of this proceeding is required to protect its substantial rights. As discussed in further detail in Sections A and C of this Brief, if the OCA is not afforded the opportunity to review the information contained in the proposals to acquire the seller's system, its ability to fully investigate, analyze and develop recommendations under Sections 1102, 1103 and 1329 will be substantially hampered. While the OCA cannot know the entirety of the information in the proposals absent the opportunity to review them, based on the information contained in the proposals provided in the prior Section 1329 proceedings and the Authority's Request for Proposals in this proceeding, the OCA might use the information, for example: to evaluate the reasonableness of the buyer's proposed capital improvements and resulting rate impact to develop its recommendation on whether the proposed transaction provides substantial, affirmative benefits, to recommend a condition on Commission-approval of the proposed transaction, and/or to check the reasonableness of the results of its valuation adjustments. As such, the OCA submits that this information is relevant to or and may lead to evidence relevant to the ALJs' and Commission's review of the proposed transaction under Sections 1102, 1103 and 1329. Without a stay, however, the abbreviated schedule for litigation is likely to preclude the OCA from incorporating relevant information obtained from the proposals in the evidentiary record and recommendations considered by the Commission.

In light of the six-month deadline for disposition, however, it is not clear that stay of the proceeding is possible. As such, that provides an even more compelling reason for the Commission to review the discovery matter immediately – to prevent the same prejudice from resulting in other Application proceedings filed under Section 1329.

C. The Proposals to Acquire the Municipal Seller’s System Are Relevant to the Commission’s Charge in This Proceeding and Should Be Discoverable.

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 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.¹⁶ The OCA respectfully submits that 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 1103.¹⁷ Further, 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.¹⁸

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

¹⁶ Order at 9 and note 2; Steelton Answer at 2.

¹⁷ McCloskey v. Pa. PUC, 1624 C.D. 2017, Order at 22 (Oct. 11, 2018); New Garden, Order at 13 (June 29, 2017) (quoting City of York v. Pa. PUC, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972)).

¹⁸ 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 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).

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. 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.

To be clear, 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.¹⁹ As demonstrated by the examples above, information in the proposals (or obtained therefrom) may bear directly on the matters the Commission is charged to investigate under Sections 1102, 1103 and 1329 regarding the proposed transaction.

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 it 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).

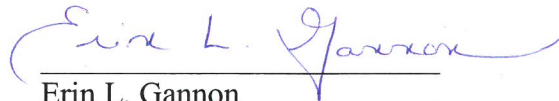
¹⁹ OCA-V-2: "Please provide a copy of all proposals received by the Borough and any accompanying exhibits with respect to the proposed sale of the water system."

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 Pa. PUC 468, 477 (1986) (“We believe that the relevancy test should be liberally applied when considering discovery requests”). There is compelling cause for broad application of the relevancy test for discovery in this proceeding, where the timeframe for investigation and litigation is severely truncated and the Applicants retain the ability to object to the admission of non-relevant evidence obtained from the proposals. The information sought by the OCA is relevant or reasonably calculated to lead to the discovery of information relevant to matters directly within the Commission’s authority and charge under Sections 1102, 1103 and 1329.

VI. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Presiding Officers grant the Petition and Certify the discovery question to the Commission for Interlocutory Review.

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 28, 2019

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 Pine Street • PO Box 1105 • Harrisburg, PA 17108-1105
Tel: 717.237.9300 • Fax: 717.237.9300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mcneeslaw.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).

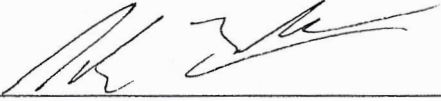
¹ The instructions attached to OCA's Set V interrogatories defined the terms "Steelton Borough Authority", "Steelton", "Borough", "Authority", or "you" as synonymous with Steelton Borough Authority.

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@meneeslaw.com
abakare@meneeslaw.com
ahylander@meneeslaw.com

Counsel to the Steelton Borough Authority

Dated: May 8, 2019