



June 12, 2019

VIA E-FILE

Jonathan P. Nase

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North (Filing Room)
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for approval of its acquisition of wastewater system assets of Exeter Township; Docket No. A-2018-3004933

PENNSYLVANIA-AMERICAN WATER COMPANY'S MOTION TO DISMISS THE OBJECTIONS OF THE OFFICE OF CONSUMER ADVOCATE

Dear Secretary Chiavetta:

Enclosed please find **Pennsylvania-American Water Company's Motion to Dismiss the Objections of the Office of Consumer Advocate** in the above-referenced caption. Copies have been served in accordance with the enclosed certificate of service.

Please feel free to contact me should you have any questions concerning the enclosed.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase

Counsel for *Pennsylvania-American Water Company*

JPN:kmg
Enclosure

cc: Per Certificate of Service
Susan Simms Marsh, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket No. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition of :
wastewater system assets of Exeter Township :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Pennsylvania-American Water Company's Motion to Dismiss the Objections of the Office of Consumer Advocate**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

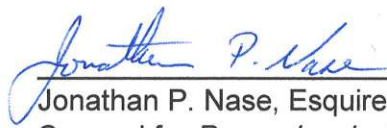
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Counsel for *Exeter Township*

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Erika McLain, Esq.
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Bureau of Investigation & Enforcement
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E-mail: ermclain@pa.gov
Counsel for *Bureau of Investigation & Enforcement*

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Harrison W. Breitman, Esq.
Ashley E. Everette, Consultant
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Joan E. London, Esq.
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Counsel for *Borough of St. Lawrence, Berks
County, PA*



Jonathan P. Nase, Esquire
Counsel for *Pennsylvania-American Water Company*

Date: June 12, 2019

VERIFICATION

I, Bernard J. Grundusky, hereby state that the facts set forth above 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).

Date: June 12, 2019



Bernard J. Grundusky
Senior Director, Business Development
Pennsylvania American Water Company

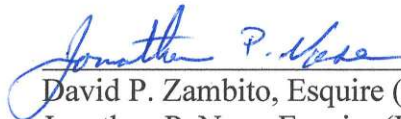
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket Nos. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition :
Of Wastewater System Assets of Exeter Township :

NOTICE TO PLEAD

TO: Parties at Docket Nos. A-2018-3004933 *et al.*

Pursuant to 52 Pa. Code § 5.342 and the Scheduling Order issued by Administrative Law Judge Andrew M. Calvelli (the "ALJ") on May 28, 2019, you are hereby notified that Pennsylvania-American Water Company ("PAWC") has filed a Motion to Dismiss the Objections of the Office of Consumer Advocate ("Motion") at the above-referenced docket to which you may file an answer within two (2) calendar days. Your failure to answer will allow the ALJ to rule on the Motion without a response from you, thereby requiring no other proof. All pleadings such as an Answer to this Motion must be filed with the Secretary of the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the undersigned counsel for PAWC.



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Susan Simms Marsh, Esq.
Deputy General Counsel
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Dated: June 12, 2019

Counsel for Pennsylvania-American Water
Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Andrew M. Calvelli

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket Nos. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition :
Of Wastewater System Assets of Exeter Township :

**MOTION OF PENNSYLVANIA-AMERICAN WATER COMPANY
TO DISMISS THE OBJECTIONS OF
THE OFFICE OF CONSUMER ADVOCATE**

AND NOW COMES Pennsylvania-American Water Company (“PAWC” or the “Company”), by and through its attorneys, pursuant to 52 Pa. Code § 5.342 and the Scheduling Order issued by Administrative Law Judge Andrew M. Calvelli (the “ALJ”) on May 28, 2019, to file this Motion (“Motion”) to dismiss the objections of the Office of Consumer Advocate (“OCA”), and to compel the OCA to answer certain interrogatories propounded by PAWC. Specifically, OCA objected to Interrogatory 8 in Pennsylvania-American Water Company’s Interrogatories and Requests for Documents Propounded on the Office of Consumer Advocate – Set I (“Set I”). PAWC respectfully requests that the ALJ compel the OCA to answer Interrogatory 8.

In support whereof, PAWC states as follows:

I. BACKGROUND

1. PAWC and Exeter entered into an agreement by which PAWC will purchase the wastewater system (the “System”) presently owned by Exeter (the “Transaction”). On September 25, 2018, PAWC filed the instant application asking the Commission to approve the Transaction pursuant to 66 Pa. C.S. §§ 1102 and 1329 (the “Section 1329 Application Proceeding”). By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the Section 1329 Application was not accepted for filing purposes because, in the opinion of Commission staff, the Application was incomplete.

2. On December 5, 2018, PAWC filed an Amended Section 1329 Application with the Commission. On December 19, 2018, the Commission notified PAWC that the Section 1329 Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not accept the Section 1329 Application until PAWC complied with certain customer notice requirements.

3. On March 8, 2019, PAWC notified the Commission that PAWC would shortly begin giving the required customer notices. On April 15, 2019, PAWC filed a verification stating that it had complied with all required customer notices. Consequently, on April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing.

4. On June 6, 2019, PAWC served the OCA with Set I. A true and correct copy of this discovery is attached as **Appendix A**.

5. As required by the Scheduling Order entered May 28, 2019, on Monday, June 10, counsel for the OCA contacted counsel for PAWC to orally object to Interrogatory 8. Counsel were unable to resolve the dispute.

6. On June 10, 2019, the OCA served its objections to Interrogatory 8. A true and correct copy is attached as **Appendix B**.

II. LEGAL STANDARD

7. Under the Commission's regulations, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. 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. *Id.* The Commission applies the relevancy test liberally. *See Pennsylvania Public Utility Commission v. The Peoples Natural Gas Company*, 62 Pa. PUC 56 (Aug. 26, 1986). Not only is the relevancy test liberally applied, but any doubts regarding the relevancy of subject matter should be resolved in favor of relevancy. *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Cmwlth. 2006). The burden of proof lies with the party challenging the relevance of discovery. *Id.*

III. THE ALJ SHOULD DISMISS THE OBJECTIONS AND COMPEL ANSWERS

8. The OCA objected to Interrogatory No. 8, which states:

Please provide a copy of all e-mails and other written communication between OCA and the Commission's Bureau of Investigation and Enforcement regarding this proceeding.

9. The OCA contends that e-mails between the OCA and I&E constitute privileged attorney work-product, which is not subject to discovery pursuant to 52 Pa. Code §§ 5.321(c), 5.323(a) and 5.) and 5.61(a)(3). OCA Objections p. 2.

10. I&E is the Commission's prosecutory bureau whereas the OCA is a statutory agency within the Office of Attorney General. The OCA is not the client of the I&E's attorneys,

nor is I&E the client of OCA's attorneys. PAWC respectfully submits that an attorney's work, when shared with a third party, is not privileged. Additionally, communications of a witness' work, when shared with a third party, are not privileged. Communications between counsel for two unrelated parties, or between witnesses of two unrelated parties, may be admissible evidence themselves, or they may lead to the discovery of admissible evidence. They are not privileged. Consequently, such communications are within the scope of permissible discovery.

11. The OCA has not produced, nor has it even alleged, that it has a community of interest agreement with I&E. PAWC respectfully submits that I&E and the OCA cannot have a community of interest because they represent different interests. I&E represents the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code ("Code"), Commission regulations and orders. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). The OCA, in contrast, represents the interests of consumers before the Commission. 71 P.S. § 309-2. The ALJ should overrule the objection and compel the OCA to answer the interrogatory.

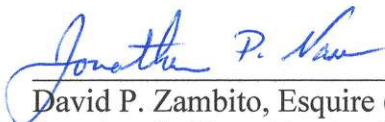
IV. CERTIFICATION

12. The undersigned counsel for PAWC certifies that, on June 12, 2019, he contacted the OCA's counsel in a further attempt to resolve the OCA's objections. Counsel were unable to resolve the dispute at that time.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, Administrative Law Judge Andrew M. Calvelli should overrule the OCA's objection to Interrogatory 8 and should compel the OCA to expeditiously answer that Interrogatory.

Respectfully submitted,



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Deputy General Counsel
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Dated: June 12, 2019

Counsel for Pennsylvania-American Water
Company

APPENDIX A



June 6, 2019

VIA E-MAIL AND FIRST CLASS MAIL

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Harrison W. Breitman, Esquire
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Harrisburg, PA 17101-1923

Re: Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for approval of its acquisition of wastewater system assets of Exeter Township; Docket No. A-2018-3004933

PENNSYLVANIA-AMERICAN WATER COMPANY'S INTERROGATORIES AND REQUESTS FOR DOCUMENTS PROPOUNDED ON THE OFFICE OF CONSUMER ADVOCATE - SET I

Dear Mr. Breitman:

Enclosed please find **Pennsylvania-American Water Company's Interrogatories and Requests for Documents Propounded on the Office of Consumer Advocate - Set I (Nos. 1-10)**, in the above-referenced matter. Copies have been served in accordance with the enclosed certificate of service.

Please feel free to contact me should you have any questions concerning the enclosed.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ:kmg
Enclosure

cc: Rosemary Chiavetta, Secretary (*Letter and Certificate of Service only*)
Per Certificate of Service
Susan Simms Marsh, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket No. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition of :
wastewater system assets of Exeter Township :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Pennsylvania-American Water Company's Interrogatories and Requests for Documents Propounded on the Office of Consumer Advocate - Set I (Nos. 1-10)**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

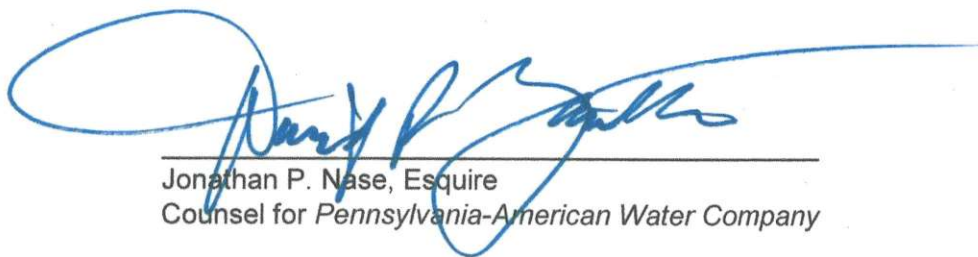
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Counsel for *Exeter Township*

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Harrison W. Breitman, Esq.
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Counsel for *Borough of St. Lawrence, Berks
County, PA*



Jonathan P. Nase, Esquire
Counsel for *Pennsylvania-American Water Company*

Date: June 6, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Andrew M. Calvelli

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket Nos. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition :
Of Wastewater System Assets of Exeter Township :

**Pennsylvania-American Water Company's
Interrogatories and Requests for Documents
Propounded on the Office of Consumer
Advocate – Set I**

Pursuant to 66 Pa. C.S. § 333 and 52 Pa. Code § 5.341 *et seq.*, Pennsylvania-American Water Company (“PAWC”), by and through the undersigned counsel, hereby propounds its Interrogatories and Requests for Production of Documents upon the Office of Consumer Advocate (“OCA”) – Set I.

DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.
4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.

5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- A. The title or other means of identification of each such document;
- B. The date of each such document;
- C. The author, preparer or signer of each such document; and
- D. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (e.g., letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. "Person" refers to, without limiting the generality of its meaning, every natural person, agent, broker, consultant, corporation, partnership, association (whether formally organized or ad hoc), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency, or any other group or organization.

10. "PAWC" means Pennsylvania-American Water Company.

11. "OCA" means the Office of Consumer Advocate and includes without limitation any of its staff, employees, counsel, consultants or agents.

INSTRUCTIONS

1. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

2. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

3. The answers provided should first restate the question asked and identify the person(s) supplying the information.

4. In answering the interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state

and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

5. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in these instructions and definitions and state the basis of the objection.

6. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

7. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

8. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

9. The interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

10. The Responding Party should include a verification in accordance with 52 Pa. Code § 1.36.

**Application of Pennsylvania-American Water Company
under Section 507, 1102 and 1329 of the Public Utility Code
for Approval of its Acquisition of Wastewater System Assets of Exeter Township
Docket Nos. A-2018-3004933 *et al.***

INTERROGATORIES FROM PAWC TO OCA – SET I

1. Please provide live, electronic versions of all Excel or other computerized files used by Glenn Watkins in determining the fair market valuation of the Exeter Township wastewater system.
2. Please provide the workpapers supporting Glenn Watkins' determination of the fair market valuation of the Exeter Township wastewater system.
3. Please provide live, electronic versions of all Excel or other computerized files used by Ashley Everette in determining the fair market valuation of the Exeter Township wastewater system.
4. Please provide the workpapers supporting Ashley Everette's determination of the fair market valuation of the Exeter Township wastewater system.
5. Please provide all e-mails and other written communication between Glenn Watkins and Ashley Everette regarding the fair market valuation of the Exeter Township wastewater system.
6. Please provide live, electronic versions of all Excel or other computerized files used by OCA's witnesses to assess the anticipated rate impact of PAWC's acquisition of the Exeter Township wastewater system on PAWC legacy customers and new customers resulting from the acquisition.
7. Please provide the workpapers supporting the OCA witnesses' assessment of the anticipated rate impact of PAWC's acquisition of the Exeter Township wastewater system on PAWC legacy customers and new customers resulting from the acquisition.
8. Please provide a copy of all e-mails and other written communication between OCA and the Commission's Bureau of Investigation & Enforcement regarding this proceeding.
9. Does OCA believe that the appraisal performed by AUS Consultants is not in compliance with the Uniform Standards of Professional Appraisal Practice? Please explain.
10. Does OCA believe that the appraisal performed by Gannett Fleming Valuation and Rate Consultants, LLC is not in compliance with the Uniform Standards of Professional Appraisal Practice? Please explain.

APPENDIX B


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
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(717) 783-5048
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consumer@paoca.org

June 10, 2019

David P. Zambito, Esquire
Jonathan P. Nase, Esquire
Cozen O'Connor
17 North Second Street
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Harrisburg, PA 17101

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 Counsel:

Enclosed please find the Office of Consumer Advocate's Objection to Pennsylvania-American Water Company's Interrogatories, Set I, Question 8 in the above referenced proceeding.

Copies of the objection have been served as indicated on the enclosed Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: PUC Secretary Chiavetta, (Letter and Certificate of Service only)
Certificate of Service
*274159

CERTIFICATE OF SERVICE

Re: Application of Pennsylvania- :
American Water Company Pursuant :
to Sections 507, 1102, and 1329 of : Docket No. A-2018-3004933
the Public Utility Code for Approval :
of its Acquisition of the Wastewater :
System Assets of Exeter Township :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Objection to Pennsylvania-American Water Company, Set I, Question 8, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of June 2019.

SERVICE BY E-MAIL and INTER-OFFICE MAIL

Erika McLain, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL, POSTAGE PREPAID

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852 Wesley Drive
Mechanicsburg, PA 17055

Barnett Satinsky, Esquire
Fox Rothschild LLP
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Wyomissing, PA 19610

/s/ Christine Maloni Hoover
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Counsel for Office of Consumer Advocate
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Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American	:	
Wastewater, Inc. Pursuant to Sections 507,	:	
1102, and 1329 of the Public Utility Code for	:	
Approval of its Acquisition of the	:	Docket No. A-2018-3004933
Wastewater System Assets of Exeter	:	
Township	:	

OBJECTIONS OF THE
OFFICE OF CONSUMER ADVOCATE TO
PENNSYLVANIA-AMERICAN WATER COMPANY'S
SET I INTERROGATORY, QUESTION 8

PAWC's Set I, No. 8 states:

Please provide a copy of all e-mails and other written communication between OCA and the Commission's Bureau of Investigation & Enforcement regarding this proceeding.

The Pennsylvania Public Utility Commission's (Commission) regulations allow a participant to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant. 52 Pa. Code § 5.321(c).

Section 5.361 of the Pennsylvania Code, however, specifically limits the scope of discovery in proceedings before the Commission. In particular, Section 5.361 provides the following:

- (a) No discovery or deposition is permitted which:
 - (1) Is sought in bad faith.
 - (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or participant.

- (3) Relates to a matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a participant or witness.

52 Pa. Code § 5.361(a).

Further, 52 Pa. Code § 5.323(a) provides the following:

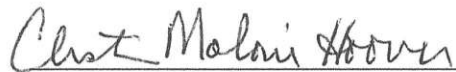
With respect to the representative of a party other than the party's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

52 Pa. Code § 5.323(a).

E-mails between the OCA and I&E constitute privileged attorney work-product, which is not permissible discoverable pursuant to 52 Pa. C.S. §§ 5.231(c), 5.323(a) and 5.361(a)(3). As such, the OCA objects to PAWC Set I Question 8.

WHEREFORE, the Pennsylvania Office of Consumer Advocate submits this Objection to PAWC Set I, Question 8.

Respectfully submitted,



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