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July 16, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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 Wastewater System Assets Of Exeter Township; Docket No. A-2018-3004933

Dear Secretary Chiavetta:

Enclosed for electronic filing is Exeter Township's Reply Brief In Opposition To St. Lawrence Borough's Claims For Relief And In Support Of The Agreed Upon Resolution Of The Section 1329 Application in the above-referenced matter. Please contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Samuel W. Cortes', written over a light blue horizontal line.

Samuel W. Cortes

SWC:jcc
Enclosures

cc: Per Certificate of Service
Barnett Satinsky, Esq. (via email)

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Washington

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Pennsylvania-American : DOCKET A-2018-3004933
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 :**

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 16th day of July, 2019, served a true copy Exeter Township's Reply Brief in Opposition to St. Lawrence Borough's Claims for Relief and in Support of the Agreed Upon Resolution of the Section 1329 Application. upon the participants listed below via email and First Class U.S. Mail, postage prepaid, unless otherwise specified:

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Samuel W. Cortes, Esquire

**COMMONWEALTH OF PENNSYLVANIA
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**EXETER TOWNSHIP’S REPLY BRIEF IN OPPOSITION TO ST. LAWRENCE
BOROUGH’S CLAIMS FOR RELIEF AND IN SUPPORT OF THE AGREED UPON
RESOLUTION OF THE SECTION 1329 APPLICATION**

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**EXETER TOWNSHIP’S REPLY BRIEF IN OPPOSITION TO ST. LAWRENCE
BOROUGH’S CLAIMS FOR RELIEF AND IN SUPPORT OF THE AGREED UPON
RESOLUTION OF THE SECTION 1329 APPLICATION**

Exeter Township (“Exeter”), by and through its counsel, pursuant to the Scheduling Order of The Honorable Administrative Law Judge Andrew M. Calvelli, dated May 28, 2019, hereby files this Reply Brief in Opposition to St. Lawrence Borough’s (the “Borough”) Claims for Relief and in Support of the Agreed Upon Resolution of the Section 1329 Application.

I. STATEMENT OF THE CASE

Exeter incorporates by reference the Statement of the Case set forth in Exeter’s Main Brief as though set forth at length herein.

II. SUMMARY OF THE CASE

In its Main Brief, the Borough reiterates its baseless contention – belied by the terms of the contract to which it agreed – that Exeter will receive a “windfall” when the sale of Exeter’s wastewater system (the “System”) closes. The Borough asserts that the Public Utility Commission (“Commission”) should require that the Borough receive some unspecified, uncalculated “compensation” as a condition of the sale. The Borough, however, fails to cite to any support for its claim that the Commission can apportion sale proceeds as a condition of approving the Section 1329 Application. The Borough’s claims are thinly veiled attempts at recovering money damages, which the Commission lacks the jurisdiction to award.

III. ARGUMENT

The Public Utility Code (“Code”) provides that the Commission: “may impose such conditions as it may deem to be just and reasonable” when granting a Certificate of Public Convenience (“Certificate”). 66 Pa. C.S. § 1103(a). Such conditions typically relate to the quality of the service provided or the protection of ratepayers. Id. No legal authority, however,

permits the Commission to apportion sale proceeds to an intervenor ostensibly to make the intervenor – seeking relief under a private contract – whole as a condition of approving a Certificate.

The cases cited by the Borough do not support its claims. See, e.g., McCloskey v. Pa. Pub. Util. Comm'n, 195 A.3d 1055, 1063 (Pa. Commw. Ct. 2018) (requiring, as conditions of approval, a cost-of-service study, a rate analysis, and, depending on post-sale revenues, the ability to apportion revenues to protect ratepayers); Popowsky v. Pa. Pub. Util. Comm'n, 937 A.2d 1040, 1060 (Pa. 2007) (affirming the Commission's determination that the conditions imposed by federal agencies appropriately mitigated any anticompetitive harm). Indeed, conditions, such as these, imposed by the Commission relating to service are “reasonable and just and therefore properly imposed.” See Rheems Water Co. v. Pa. Pub. Util. Comm'n, 620 A.2d 609, 611 (Pa. Commw. Ct. 1993) (holding that the Commission properly imposed conditions aimed at improving the condition of water and service but improperly required a bulk water agreement).

In contrast to the above cases, the Borough seeks to involve the Commission in its contractual dispute with the Township. The Borough seeks an award of “compensation” from the Commission by labeling the compensation a “condition” of the sale. None of the cases cited in the Borough's Main Brief suggest that the Commission can assign a portion of the proceeds from the sale of the System as a condition of approving the sale. Nor can the Borough identify

any supporting relevant authority because it is seeking contract damages, which the Commission may not issue.¹

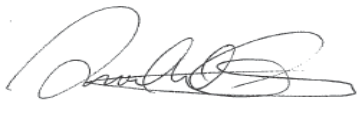
IV. CONCLUSION

For the reasons stated herein, as well as those discussed in detail in Exeter’s Main Brief, Exeter respectfully requests that the Commission deny whatever claims are alleged and/or relief is sought by the Borough against Exeter. Exeter further requests that the Commission approve the Section 1329 Application, as modified by the parties’ settlement.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: July 16, 2019

By: 
Barnett Satinsky, Esquire
Samuel W. Cortes, Esquire
Attorney ID Nos. 15767; 91494

Attorneys for Applicant, Exeter Township

¹ Although the Commission is granted a “statutory array of [] remedial and enforcement powers,” these powers do “**not include the power to award damages.**” *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (emphasis added); see also *T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 779 (Pa. Commw. Ct. 1985) (observing that the Commission lacks authority to award damages in negligence or contract actions).