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August 20, 2018

Via Electronic Filing


Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company
Wastewater Division – R-2018-3002504

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pennsylvania Builders Association's Prehearing Memorandum with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Kristine E. Marsilio

KEM/lww
Enclosure

cc: Hon. Marta Guhl w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Pennsylvania Builders Association's Prehearing Memorandum (Wastewater) upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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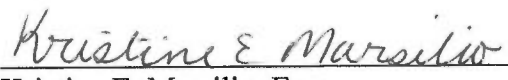
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Dated: August 20, 2018



Kristine E. Marsilio, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2018-3002504
	:	
Pennsylvania-American Water Company	:	
Wastewater Division	:	

**PREHEARING MEMORANDUM OF THE PENNSYLVANIA
BUILDERS ASSOCIATION**

Pursuant to 52 Pa. Code §§ 5.221-5.224 and the Prehearing Conference Order issued on August 13, 2018 in the above-captioned proceeding, the Pennsylvania Builders Association (“PBA”) submits this Prehearing Memorandum.

I. PROCEDURAL HISTORY

On June 5, 2018, PAWC filed Supplement No. 6 to its Tariff Wastewater-Pa P.U.C. No. 16 (“Supplement No. 6”) to become effective August 4, 2018, proposing the addition of Rule and Regulation W – Taxes on Deposits for Construction, Customer Advances and Contributions in Aid of Construction (“CIAC”).

The Commission’s Bureau of Investigation and Enforcement filed a Formal Complaint on July 24, 2018, and the Office of Consumer Advocate filed a Notice of Intervention on July 25, 2018.

By Order dated August 2, 2018, Supplement No. 6 was suspended by operation of law until February 4, 2019, unless otherwise directed by Order of the Commission. The Commission assigned this matter to the Office of Administrative Law Judge.

On August 13, 2018, Administrative Law Judge Marta Guhl issued a Prehearing Order, scheduling a telephonic Prehearing Conference for Wednesday, August 22, 2018 and directing the parties to file Prehearing Memorandums no later than noon on Monday, August 20, 2018.

II. **REPRESENTATION**

The PBA's attorneys in this matter are:

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Dan Clearfield, Esquire
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III. **ISSUES**

Supplement No. 6 addresses the impact of the Federal Tax Cuts and Jobs Act (the "TCJA") on the requirement for water and sewer authorities to recognize Customer Advances for Construction ("CAC"), CIAC, and certain customer deposits (collectively, "Contributions and Advancements") as taxable income. The TCJA recently eliminated the exemption for water and sewer utilities from recognizing Contributions and Advancements as taxable income. The Company filed Supplement No. 6 to affirm and memorialize how these Contributions and Advancements will be calculated and recovered in rates in light of these changes in Federal law.

Through Supplement No. 6, PAWC has proposed to adopt the "no gross-up" method of billing and accounting for CIAC and CAC. Under this method, the Company will pay the necessary taxes on Contributions and Advancements. Such income taxes will be segregated in a

deferred account for inclusion in rate base in a future rate case proceeding. Under the Company's proposal, income tax associated with Contributions and Advancements will not be charged to the specific depositor/contributor of the capital.

The PBA strongly supports PAWC's proposal. Importantly, under the Company's proposal, the income tax consequences of CIAC will be included in the overall calculation of income tax expense and, consequently, developers and other homebuilders will not have to assume a new financial obligation in paying for the construction of main extensions. The PBA submits that the Company's proposal is consistent with reasonable ratemaking policy and is consistent with the methods used by other Pennsylvania utilities with taxable CIACs. As noted by the Company in its Supplement No. 6 filing, the Commission, in its approval of the no-gross up method for other utilities with taxable CIACs, has already determined the no-gross up method to be just, reasonable, lawful and nondiscriminatory. *See e.g.* Columbia Gas of Pennsylvania, Inc., Tariff Gas – Pa. P.U.C. No 9, Rule 8.2.5 Taxes on Deposits for Construction & Customer Advances, page 49a; *see also* York Wager Company, Tariff Water – Pa. P.U.C. 14, Rule 3.11.8 Taxes on Deposits for Construction & Customer Advances, page 15.

IV. WITNESSES AND EVIDENCE

The PBA continues to evaluate whether to present witnesses in this proceeding. Should the PBA determine to present witnesses, the PBA will provide appropriate notice to the Presiding Officer and the parties.

V. LITIGATION AND DISCOVERY RULES

The PBA is willing to work with the Presiding Officer and the parties to develop a procedural schedule in this proceeding. Direct Energy is also willing to discuss any proposed discovery modifications.

VI. SETTLEMENT

The PBA is willing to participate in settlement discussions with any party to narrow the issues in this matter.

Respectfully submitted,



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Date: August 20, 2018

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The Pennsylvania Builders Association