



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

April 29, 2019

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Winola Water Company,
Docket Nos. C-2018-2644592, P-2018-3006216, & I-2018-3006498

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's
**Answer to the Petition of Pennsylvania-American Water Company for Amendment
and Deferred Accounting Treatment** for the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions,
please contact me at (717) 425-7593

Sincerely,

A handwritten signature in black ink that reads "Scott B. Granger". The signature is written in a cursive style and is positioned above the typed name and title.

Scott B. Granger
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney I.D. No. 63641

SBG/seb
Enclosure

cc: Honorable Joel H. Cheskis
Per Certificate of Service
ra-osa@pa.gov (including MS Word version)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

v.

Winola Water Company

:
:
:
:
:
:
:
:
:

Docket No.: P-2018-3006216
C-2018-2644592
I-2018-3006498

**BUREAU OF INVESTIGATION AND ENFORCEMENT’S
ANSWER TO THE PETITION OF
PENNSYLVANIA-AMERICAN WATER COMPANY
FOR AMENDMENT AND DEFERRED ACCOUNTING TREATMENT**

**TO THE HONORABLE MEMBERS OF THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION:¹**

On Friday afternoon, April 19, 2019, the Pennsylvania-American Water Company (“PAWC” or “Company” or “Receiver”) and its counsel filed, pursuant to 52 Pa. Code §§ 5.572(d) and 5.41, as well as Paragraph 3 of Appendix A to the Ex Parte Emergency Order entered in this proceeding on November 29, 2018 (“Ex Parte Emergency Order”) its Petition of Pennsylvania American Water Company for Amendment and Deferred Accounting Treatment (“Petition to Amend”). I&E notes PAWC and its counsel did not

¹ The Bureau of Investigation and Enforcement (“I&E”) is also serving a courtesy copy of its Answer to PA American Water Company’s Petition to Amend with Deputy Chief Administrative Law Judge Joel D. Cheskis as DCALJ Cheskis is presiding over the companion Section 529 investigation proceeding at Docket No. I-2018-3006498. It is I&E’s understanding that the original Complaint docket (C-2018-2644592) and the Ex Parte Emergency Petition docket (P-2018-3006216) were consolidated into the Section 529 investigation proceeding docket upon the ordering of the opening of the Section 529 investigation in the Ex Parte Emergency Order signed by PUC Commissioner Norman J. Kennard on November 29, 2018.

file the Petition to Amend at the companion Section 529 investigation proceeding at Docket I-2018-3006498 where the substantive issues raised in this Petition to Amend are more properly litigated and adjudicated, as explained *infra*.

In response, the Bureau of Investigation and Enforcement hereby files this timely I&E Answer to the Petition of Pennsylvania American Water Company for Amendment and Deferred Accounting Treatment (“I&E Answer”) requesting the Commission deny the requested relief and allow the issues raised to be properly litigated and adjudicated in the companion Section 529 investigation proceeding.

I. INTRODUCTION

- 1. Admitted.
- 2. Admitted.

II. BACKGROUND

- 3. Admitted.
- 4. Admitted.

5. Admitted in part, denied in part. It is admitted that an Ex Parte Emergency Order, granting I&E’s Petition for an Emergency Order, was entered on November 29, 2018. By way of further response, the Ex Parte Emergency Order is an eight-page document with a three-page Appendix A. And, as a written document, the Ex Parte Emergency Order speaks for itself and must be read in the context of the entire document. To the extent the averments in this paragraph 5 paraphrase the Ex Parte Emergency Order, they are denied.

6. Admitted in part, denied in part. It is admitted that the Ex Parte Emergency Order is an eight-page document with a three-page Appendix A. And, as a written document, Appendix A speaks for itself and must be read in the context of the entire document. To the extent the averments in this paragraph 6 paraphrase Appendix A, they are denied.

7. Admitted. It is admitted the Commission's Ratification Order approving the Ex Parte Emergency Order was entered on December 6, 2018.

8. Denied. I&E is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and the same are therefore denied. Strict proof thereof is demanded.

9. The averments in this paragraph are a prayer for relief to which no response is required. By way of further response, petitions for clarification are governed by Section 527(c) and are required to be filed within 15 days after the Commission order was entered. Therefore, PAWC's Petition to Amend, to the extent it is requesting relief in the form of a clarification, is untimely and should be rejected. Finally, to the extent the Petition to Amend requesting the Commission amend Appendix A was filed pursuant to Section 5.572(d), the issues raised should be properly litigated and adjudicated in the companion Section 529 investigation proceeding.

III. LEGAL STANDARDS

10. The averments in this paragraph are conclusions of law and no response is required. They are therefore deemed denied. By way of further response, *see* I&E's response to paragraph 9, *supra*. Additionally, PAWC's Petition to Amend is also

untimely pursuant to 66 Pa. C.S. § 703(f) relating to requests for a Rehearing since Section 703(f) requires petitions be filed within 15 days after an order has been entered. Finally, the purpose of Section 703(g) is to allow the Commission, on its own motion, to rescind or amend a prior Commission order provided the Commission first affords the affected parties notice and opportunity to be heard.²

11. The averments in this paragraph are conclusions of law. No response is required. They are therefore deemed denied. By way of further response, *see* I&E's response to paragraphs 9 and 10, *supra*. Additionally, PAWC correctly states that the standards for granting a Petition for Amendment were set forth in *Duick* (*citation omitted*). Further, as stated by PAWC, such petitions are likely to succeed only when they raise "new and novel arguments." However, PAWC's Petition to Amend does not raise new and novel arguments. In fact, all the substantive issues raised in the Petition to Amend are already contemplated by Appendix A attached to the Ex Parte Emergency Order and 66 Pa. C.S. § 529; and, are properly litigated and adjudicated in the companion Section 529 investigation proceeding at Docket No. I-2018-3006498.

12. Denied. The averments in this paragraph are conclusions of law. No response is required. They are therefore deemed denied. It is specifically denied that the *Duick* standards have been met by the averments in PAWC's Petition to Amend. Finally, *see* I&E's Answer at paragraphs 9-11 *supra* and 13-36 *infra*.

² Also consider, the "notice and opportunity to be heard" requirement in 66 Pa. C.S. § 703(g) conflicts with PAWC's request for expedited treatment, *infra*.

IV. REQUEST FOR AUTHORITY TO MAKE CAPITAL IMPROVEMENTS

13 – 16. The averments set forth in paragraphs 13 through 16 regarding the authority to make capital improvements are prayers for relief and conclusions of law to which no response is required. They are therefore deemed denied. By way of further response, Appendix A, Paragraph 1(e) authorizes PAWC to respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable services. And, Section 529 provides for the submission of a Plan for Improvements in contemplation of the acquired system needing capital improvements to be brought into compliance with applicable statutory and regulatory standards. Additionally, Appendix A Paragraphs 1(s) and 2(b) both authorize PAWC to establish a deferred expense account for expenses incurred by WWC that are payable to the receiver (PAWC); and, to establish a deferred expense account for expenses incurred by the receiver (PAWC) resulting from the Ex Parte Emergency Order. Finally, Section 529 authorizes that the “reasonably and prudently incurred costs of each improvement shall be recoverable in rates only after that improvement becomes used and useful in the public service.” 66 Pa. C.S. § 529(j).

Therefore, as stated earlier, all of the issues raised in PAWC’s Petition to Amend can and will be properly litigated and adjudicated in the companion Section 529 investigation proceeding. For these reasons PAWC’s Petition to Amend is premature and unnecessary and should be denied.

V. REQUEST FOR AUTHORITY TO BILL CUSTOMERS

17 – 24. The averments set forth in paragraphs 17 through 14 regarding the authority to bill customers are prayers for relief and conclusions of law to which no response is required. By way of further response, the averments are admitted upon information and belief. Further, Appendix A Paragraph 1(i) explicitly provides that PAWC may assume WWC's billing and collection functions and it is specifically denied that the authority to assume WWC's billing and collection functions needs amended or clarified by way of this Petition to Amend. Finally, all of the issues raised in PAWC's Petition to Amend can and will be properly litigated and adjudicated in the companion Section 529 investigation proceeding.

VI. REQUEST FOR RIGHT TO SEEK RECOVERY IN RATES

25 – 33. Admitted in part, denied in part. It is admitted, upon information and belief, that PAWC, as the appointed receiver, has incurred expenses as a result of PAWC's compliance with the Ex Parte Emergency Order and Appendix A. Strict proof as to the amount and the prudence and reasonableness of said expenses incurred is demanded. However, it is specifically denied that Appendix A does not address the specific procedures that are available to PAWC to recover its prudent and reasonably incurred expenses. Further, both Appendix A and Section 529 provide for the mechanisms to be used by PAWC to recover its prudently and reasonably incurred expenses. And, the issues regarding the recovery of PAWC's expenses, as the appointed receiver, are more appropriately litigated and adjudicated as part of the companion Section 529 investigation proceeding.

Finally, PAWC expresses concerns regarding potential obstacles to PAWC's recovery of all reasonable and prudent costs incurred in the alleged absence of clear authority and specific cost recovery procedures; or, if the Commission ultimately, in the alternative, does not direct any capable public utility to acquire WWC or directs a capable public utility other than PAWC to acquire WWC. However, in consideration of these potential alternative outcomes, it is within PAWC's complete control to cure their concerns through the resolution of the Section 529 investigation proceeding if PAWC so chooses.

VII. THE PUBLIC INTEREST

34 – 36. The averments set forth in paragraphs 34 through 36 regarding the public interest are prayers for relief and conclusions of law to which no response is required. They are therefore deemed denied. By way of further response, issues regarding the public interest and the recovery of reasonable and prudent costs incurred are more properly litigated and adjudicated in the companion Section 529 investigation proceeding.

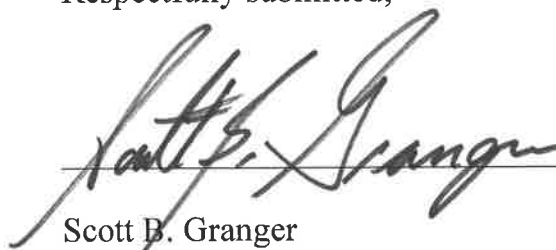
VII. REQUEST FOR EXPEDITED CONSIDERATION

37. Denied. It is specifically denied that is necessary for the Commission to consider or render a decision on PAWC's Petition to Amend on an expedited basis. Rather, as I&E has averred *supra*, the issues raised in PAWC's Petition to Amend, including the request for amendment of Appendix A and the clarification of the cost recovery issues, are more properly litigated and adjudicated in the companion Section 529 investigation proceeding.

IX. CONCLUSION

WHEREFORE, the Bureau of Investigation and Enforcement requests that the Pennsylvania Public Utility Commission deny the relief requested by Pennsylvania American Water Company in the instant Petition to Amend and find that the issues raised in the Petition to Amend are more properly litigated and adjudicated in the companion Section 529 investigation proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott B. Granger", is written over a horizontal line.

Scott B. Granger
Prosecutor
PA Attorney I.D. No. 63641

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 787-4887

Dated: April 29, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement, Complainant	:	
	:	
v.	:	Docket No. C-2018-2644592
	:	Docket No. P-2018-3006216
Winola Water Company, Respondent	:	Docket No. I-2018-3006498
	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the Bureau of Investigation and Enforcement's **Answer to the Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment** dated April 29, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

Ralph Scartelli
Winola Water Company
724 N Webster Ave
Scanton, PA 18510
sgciralph@comcast.net

Frances P. Orth
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
fporth@aquaamerica.com

John R. Evans, Esq.
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
jorevan@pa.gov

Crystal Mickalowski
Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915
cmickalows@pa.gov

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

David P. Zambito, Esq.
Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com
jnase@cozen.com

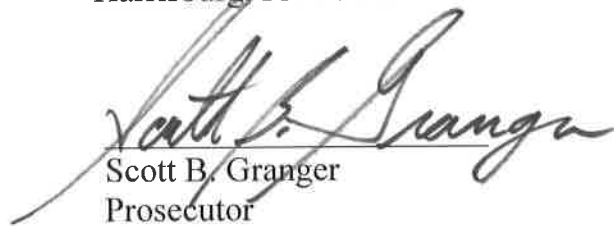
Elizabeth Triscari, Esq.
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Elizabeth.triscari@amwater.com

Christy M. Appleby, Esq.
Christine Hoover, Esq.
Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923
cappleby@paoca.org
choover@paoca.org
egannon@paoca.org

Service via First Class Mail

Overfield Township
775 Lower Mill City Road
Dalton, PA 18414

Suez Water Pennsylvania, Inc.
6310 Allentown Boulevard, Suite 102
Harrisburg, PA 17112



Scott B. Granger
Prosecutor

PA Attorney ID No. 63641
Bureau of Investigation and Enforcement

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: 717-425-7593

Dated: April 29, 2019