



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

IN REPLY PLEASE
REFER TO OUR FILE

May 28, 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. I-2018-3006498, C-2018-2644592, & P-2018-3006216

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
Reconsideration of Staff Actions** 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,


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

SBG/seb
Enclosure

cc: Per Certificate of Service
Honorable Joel H. Cheskis
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

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Docket Nos.: I-2018-3006498
C-2018-2644592
P-2018-3006216

**BUREAU OF INVESTIGATION AND ENFORCEMENT'S
ANSWER TO THE PETITION OF
PENNSYLVANIA-AMERICAN WATER COMPANY
FOR RECONSIDERATION OF STAFF ACTIONS**

TO: THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

On May 17, 2019, the Pennsylvania-American Water Company (“PAWC” or “Company” or “Receiver”) and its counsel filed, pursuant to 52 Pa. Code §§ 5.44(a), a Petition of Pennsylvania-American Water Company for Reconsideration of Staff Actions (“Petition for Reconsideration”) to request that the Pennsylvania Public Utility Commission (“Commission”) reconsider the staff’s (“Secretary’s Bureau” or “Staff”) decision to issue the Secretarial Letter dated May 8, 2019 (the “Secretarial Letter”) in the above-referenced matters. The Staff’s Secretarial Letter was issued in response to PAWC’s Petition of Pennsylvania-American Water Company for Amendment and

Deferred Accounting Treatment (“Petition for Amendment”) filed on April 19, 2019.

The Secretarial Letter correctly directed:

The Office of Administrative Law Judge has established a procedural schedule providing for direct, rebuttal, surrebuttal, and rejoinder testimony prior to hearings on August 27 and 28, 2019, in the above-referenced matter[s]. *Pennsylvania Public Utility Commission, et. al v. Winola Water Company*, Second Scheduling Order at 5, Docket Nos. P-2018-3006216, C-2018-2644592, and I-2018-3006498 (April 8, 2019).

You are advised that the matter addressed in the Petition is referred to the Office of Administrative Law Judge for disposition according to the procedural schedule at the above-referenced dockets.¹

PAWC now requests that the Commission reverse the Staff’s action as stated in the Secretarial Letter and consider PAWC’s prior Petition for Amendment. In support of its request, PAWC makes essentially the same arguments it made in its prior Petition for Amendment.

In response, the Bureau of Investigation and Enforcement hereby files this timely I&E Answer to the Petition of Pennsylvania-American Water Company for Reconsideration of Staff Actions (“I&E Answer to Petition for Reconsideration”) requesting the Commission deny the requested relief and allow the issues raised to be properly litigated and adjudicated in the companion 66 Pa.C.S. § 529 (“Section 529”) investigation proceeding as stated in the Secretarial Letter. Because PAWC raises essentially the same arguments in this Petition for Reconsideration as it did in its prior Petition for Amendment, I&E incorporates herein by reference the averments set forth in

¹ Secretarial Letter, Docket Nos. P-2018-3006216, C-2018-2644592, I-2018-3006498 (dated May 8, 2019).

I&E's Answer to PAWC's Petition for Amendment and Deferred Accounting Treatment ("I&E Answer to Petition for Amendment") filed April 29, 2019. Additionally, I&E will reference, from time to time, the Answer of the Office of Consumer Advocate to the Petition of Pennsylvania American Water ("OCA Answer to Petition for Amendment") also filed April 29, 2019.

I. Procedural History

I&E adopts the procedural history of the companion proceedings as set forth in PAWC's Petition for Reconsideration.

II. The Staff's Decision to Refer the Petition to Amend to the OALJ was Correct

The staff correctly referred PAWC's Petition for Amendment back to the OALJ. The issues raised by PAWC in its Petition for Amendment should have been properly raised by PAWC in the on-going proceeding and they still can be. Both Appendix A attached to the Ex Parte Emergency Order ("Appendix A") and Section 529 are applicable to the issues raised by PAWC. The procedural schedule is already in place and PAWC will suffer no prejudice or irreparable harm as a result of the staff action. Further, I&E incorporates the averments set forth in I&E Answer to Petition for Amendment.²

² See, I&E Answer to Petition for Amendment, pp. 1-8.

III. PAWC's Petition for Amendment should be Denied

As stated below, the *Duick*³ standards have not been satisfied and amending Appendix A is not warranted, nor necessary. Appendix A, in combination with Section 529, is sufficient to address the issues raised by PAWC.

A. The *Duick* Standards have Not been Satisfied

As stated in I&E's Answer to the Petition for Amendment,⁴ PAWC correctly states that the standards for granting a Petition for Amendment were set forth in *Duick*. Further, the *Duick* standards present a high threshold and such petitions are likely to succeed only when they raise "new and novel arguments." However, PAWC's Petition for Amendment did not raise new and novel arguments. In fact, all the substantive issues raised in PAWC's Petition for Amendment have already been contemplated by Appendix A and Section 529; and, are more properly litigated and adjudicated in the companion Section 529 investigation proceeding at Docket No. I-2018-3006498. PAWC will suffer no prejudice or irreparable harm if the issues are raised during the normal course of the procedural schedule already established.

B. PAWC's Special Request for Capital Improvements Should be Denied

As I&E stated in its I&E Answer to Petition for Amendment, 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 service.⁵ Section 529 provides for the submission of a Plan for Improvements in

³ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) ("*Duick*")

⁴ I&E Answer to Petition for Amendment, pp. 1-8.

⁵ *Id.*, p. 5

contemplation of the acquired system needing capital improvements to be brought into compliance with applicable statutory and regulatory standards.⁶ Additionally, Appendix A, Paragraphs 1(s) and 2(b) both authorize PAWC to establish a deferred expense account for expenses incurred by Winola 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.⁷ 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).⁸

Furthermore, the OCA stated in its OCA Answer to Petition for Amendment:

In summary, the OCA does not oppose PAWC’s right to receive cost recovery for its prudent and reasonable costs, but such recovery must be provided in accord with Public Utility Code and the Commission’s regulations. The OCA submits that PAWC should be permitted to create a deferred account pursuant to the Commission’s Ex Parte Order and a regulatory asset for pre-acquisition and closing costs, as discussed above. PAWC, however, must appropriately account for any credits received to the regulatory asset, no matter how *de minimus*, and PAWC may not double-recover the costs from ratepayers, Winola and, if applicable, another buyer. Moreover, PAWC should not receive special regulatory treatment for *post-acquisition* costs, including capital costs and depreciation because such treatment is not available or appropriate for non-Section 1329 proceedings.⁹

Therefore, PAWC’s request for explicit authority to make capital improvements should be denied as contrary to law in part and unnecessary in the remainder.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ OCA Answer to Petition for Amendment, pp. 6-9.

C. PAWC’s Request for the Right to Seek Recovery in Rates of Expenses Incurred as the Appointed Receiver

Both Appendix A and Section 529 provide the mechanisms to be used by PAWC to recover its prudently and reasonably incurred expenses.¹⁰ And, the issues regarding the recovery of PAWC’s expenses, as the appointed receiver, are more appropriately litigated and adjudicated as directed by the Secretarial Letter as part of the Section 529 investigation proceeding. Further, the OCA raised concerns regarding PAWC’s proposed treatment of the regulatory asset and the proposed cost recovery mechanism.¹¹ The issues raised by OCA are also more appropriately litigated and adjudicated as directed by the Secretarial Letter as part of the Section 529 investigation proceeding.

D. PAWC’s Request for Authority to Bill Customers

Appendix A, Paragraph 1(i) explicitly provides that PAWC may assume Winola’s billing and collection functions¹² and it is specifically denied that the authority to assume Winola’s billing and collection functions needs amended or clarified by way of this Petition for Reconsideration or the prior PAWC Petition for Amendment. Finally, all of the issues raised by PAWC regarding the authority to bill customers can and will be properly litigated and adjudicated as directed by the Secretarial Letter in the Section 529 investigation proceeding.

¹⁰ See, I&E Answer to Petition for Amendment, pp. 6-7. See also, OCA Answer to Petition for Amendment, pp. 5-9.

¹¹ See, OCA Answer to Petition for Amendment, pp. 7-9.

¹² See, I&E Answer to Petition for Amendment, p. 6. See also, OCA Answer to Petition for Amendment, pp. 4-5.

IV. PAWC's requested relief In the Alternative should be Denied and the Commission should not strike the Statement in the Secretarial Letter requiring the Petition to be considered "According to the Procedural Schedule" Previously Established in these Matters

The Staff correctly referred PAWC's Petition for Amendment back to the OALJ with the instruction to address the issues raised according to the procedural schedule already established. The issues raised by PAWC in its Petition for Amendment should have been properly raised by PAWC in the on-going proceeding and they still can be. Expedited treatment of the issues is not warranted, nor necessary. PAWC will suffer no prejudice or irreparable harm if the issues are raised during the normal course of the procedural schedule already established.

V. PAWC's Request for Expeditious Consideration of its Petition for Amendment should be Denied

For the reasons stated herein and in the I&E Answer to Petition for Amendment¹³ PAWC's request for expedited treatment of the issues raised in its Petition for Amendment should be denied. The issues raised by PAWC in its Petition for Amendment should have been properly raised by PAWC in the on-going proceeding and they still can be. Expedited treatment of the issues is not warranted, nor necessary. PAWC will suffer no prejudice or irreparable harm if the issues are raised during the normal course of the procedural schedule already established.

¹³ See also, OCA Answer to Petition for Amendment.

VI. 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 for Reconsideration for the foregoing reasons and for the reasons stated in both the I&E Answer to Petition for Amendment and the OCA Answer to Petition for Amendment. Finally, I&E respectfully requests the Commission direct the OALJ to proceed as directed by the May 8, 2019 Secretarial Letter.

Respectfully submitted,

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

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

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Dated: May 28, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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 Reconsideration of Staff Actions** dated May 28, 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):

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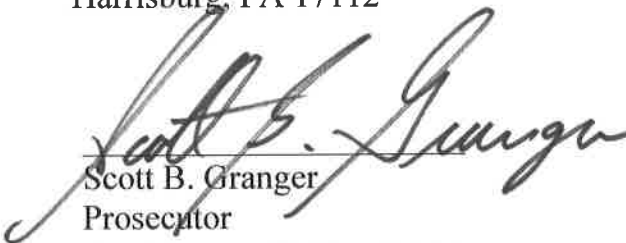
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Dated: May 28, 2019