



June 2, 2020

VIA E-FILING

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

Re: Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. Winola Water Company; Docket Nos. C-2018-2644592 et al.

Joint Stipulation of Fact

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Joint Stipulation of Fact ("Stipulation") between Pennsylvania-American Water Company, Winola Water Company, the Office of Consumer Advocate and the Commission's Bureau of Investigation and Enforcement (together, the "Stipulating Parties"). Aqua Pennsylvania, Inc. does not oppose the Stipulation.

Copies of the Stipulation are being served on the Presiding Officer, Deputy Chief Administrative Law Judge Joel H. Cheskis, and on all parties, as indicated on the enclosed Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please contact me.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase
Counsel for *Pennsylvania-American Water Company*

JPN
Enclosure

cc: Deputy Chief Administrative Law Judge Joel H. Cheskis
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement

v.

Winola Water Company

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Stipulation of Fact**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

DUE TO THE CORONAVIRUS PANDEMIC, SERVICE IS BEING MADE BY E-MAIL ONLY:

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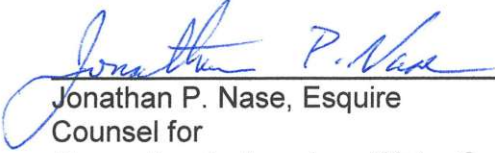
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DATED: June 2, 2020



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Joel H. Cheskis**

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

JOINT STIPULATION OF FACT

Pennsylvania-American Water Company (“PAWC”), Winola Water Company (“Winola”), the Office of Consumer Advocate (“OCA”) and the Bureau of Investigation & Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) (hereinafter, collectively referred to as the “Stipulating Parties”), file this Joint Stipulation of Fact (“Stipulation”) in the above-captioned proceedings.¹ In support of the Stipulation, the Stipulating Parties represent as follows:

¹ All Stipulating Parties are also Signatories to the “Joint Petition for Approval of Settlement of All Issues” (“Settlement”) filed contemporaneously with this Stipulation in the above-captioned proceedings. Aqua Pennsylvania, Inc. (“Aqua”), which intervened in these proceedings, does not oppose the Stipulation. The Stipulating Parties, together with Aqua, are referred to herein as the “Parties.”

1. Paragraphs 1 through 33 (regarding “Background and Procedural History”) of the Settlement, filed on this same date in the above-captioned proceedings, are hereby incorporated by reference.

2. Considering that the Stipulating Parties have reached a Settlement prior to the introduction of any testimony in this matter, and in view of the need for substantial evidence supporting the Commission’s decision, the Stipulating Parties hereby jointly stipulate to the veracity of the facts set forth in **Appendix A**.

3. This Stipulation is presented by the Stipulating Parties in conjunction with the Settlement, which is intended to settle all issues in the above-captioned proceedings. If the Commission rejects or otherwise modifies the Settlement, the Stipulating Parties reserve their respective procedural rights to submit testimony and exhibits, and cross-examine witnesses at on-the-record evidentiary hearings.

4. This Stipulation is being presented in conjunction with the Settlement only to resolve issues in the above-captioned proceedings. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party in this or any future proceeding as a consequence of this Stipulation, or any of its terms or conditions.

5. Attached hereto as **Appendix B** is a proposed “Order Granting Joint Stipulation of Fact” for consideration by the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis.

WHEREFORE, the Stipulating Parties, by their respective counsel, respectfully request that the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis approve this Stipulation of Fact.

Respectfully submitted,



Date: June 1, 2020

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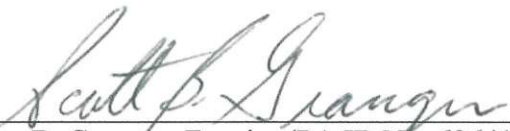
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Date: June 1, 2020

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APPENDIX A
STIPULATED FACTS

THE PARTIES

1. Winola is a Commission-regulated public utility (Utility Code 210106) providing water service to the public for compensation in Overfield Township, Wyoming County, Pennsylvania (the “Township”).

2. PAWC is a regulated public utility corporation (Utility Codes 212285 (water) and 230073 (wastewater)) duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service is furnished by PAWC to the public in a service territory encompassing more than 400 communities across the Commonwealth with a combined population of over 2,400,000.

3. I&E serves as the Commission’s prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code (“Code”) and Commission Regulations and Orders. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

4. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

5. Aqua is a regulated public utility company (Utility Code 210104), duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua furnishes water service to over 430,000 customer accounts in Pennsylvania (representing a population of approximately 1.4 million people). Aqua’s existing service territory covers various counties throughout Pennsylvania, including parts of Wyoming County.

WINOLA'S WATER SYSTEM

6. Winola owns and operates a water system (the "System") providing water service to approximately ten year-round customers and approximately twenty-five (25) seasonal customers in the Township. The assets of the System include two wells, an inground storage tank, a distribution system and associated appurtenances.

7. On October 5, 2018, the Pennsylvania Department of Environmental Protection ("DEP") directed Winola to issue to its customers a public notification advising that water produced by Winola is not safe for consumption (the "Do Not Consume Order"), due to high levels of cadmium and lead in the water.

8. On November 28, 2018, I&E filed a Petition for an Ex Parte Emergency Order alleging, *inter alia*, that Winola had failed to remedy the high levels of cadmium and lead in the water and failed to comply with a DEP directive to provide an alternative source of potable water to its customers. I&E further alleged that Winola's facilities are in serious need of repair and maintenance that Winola did not intend to address. Finally, I&E alleged that Winola did not have the resources and expertise to address these maintenance issues.

9. On November 29, 2018, Commissioner Norman J. Kennard signed an Ex Parte Emergency Order ("Ex Parte Emergency Order") ordering the commencement of a Section 529 investigation and directing PAWC to serve as the receiver (the "Receiver") for Winola pending the outcome of that investigation. Attachment A to the Ex Parte Emergency Order outlined the powers and duties of the Receiver.

10. The Commission ratified the Ex Parte Emergency Order at its Public Meeting of December 6, 2018 and issued a Ratification Order accordingly.

THE RECEIVER'S AUTHORITY

11. PAWC began serving as Receiver for Winola on December 10, 2018, and continues to serve as Receiver.

12. Appendix A to the Ex Parte Emergency Order lists the powers and duties of the Receiver. Appendix A provides at Paragraph 1.c. that PAWC shall:

Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.

13. PAWC has expressed concern that Paragraph 1.c. of Appendix A to the Ex Parte Emergency Order does not explicitly give PAWC authority, as Receiver, to make capital improvements to the System, including but not limited to the capital improvements necessary to address the Do Not Consume Order. Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment at ¶¶ 13-16.

14. PAWC has completed capital improvements to the System, including but not limited to the improvements necessary to address the Do Not Consume Order, which was lifted on October 29, 2019. *See, e.g.*, PAWC's Status Reports filed February 7, 2019, May 23, 2019 and August 6, 2019.

15. The Settlement would clarify PAWC's authority, as Receiver, to make capital improvements to the System, including but not limited to capital improvements necessary to remove the Do Not Consume Order.

16. Appendix A to the Ex Parte Emergency Order also states that PAWC, as Receiver, is to assume Winola's billing and collection functions, Paragraph 1.i., and comply with Winola's effective tariff for Winola's customers. Paragraph 1.l.

17. PAWC has expressed concern about its authority, as Receiver, to charge Winola's customers for water service during the period that the Do Not Consume Order was in effect. Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment at ¶¶ 17-24.

18. PAWC, as Receiver, did not bill Winola's customers during the period that the Do Not Consume Order was in effect.

19. PAWC, as Receiver, began billing Winola's customers on November 1, 2019.

20. The Settlement would clarify PAWC's authority, as Receiver, to not bill customers of Winola while the Do Not Consume Order was in effect and to bill customers after the Do Not Consume Order was lifted.

21. Appendix A to the Ex Parte Emergency Order further states that PAWC, as Receiver, has the duty and responsibility to:

“Establish a deferred expense account for expenses incurred by [Winola] that are payable to the Receiver.” Paragraph 1.s.

“Charge [Winola] reasonable rates for all services rendered to or for [Winola] on behalf of the receivership.” Paragraph 1.w.

“Establish a deferred expense account for expenses incurred by the receiver resulting from this order, including prudent and reasonable legal fees.” Paragraph 2.b.

22. PAWC has expressed concern about its ability to seek recovery in rates of any costs it incurs as Receiver that are not paid by Winola. Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment at ¶¶ 25-33.

23. PAWC, as Receiver, has incurred considerable operations and maintenance expenses as well as capital expenditures. *See, e.g.*, PAWC's Status Reports filed February 7, 2019, May 23, 2019 and August 6, 2019.

24. PAWC, as Receiver, is to make reasonable efforts to establish the financial position of Winola as of the date that PAWC assumed Receivership of the System, Ex Parte Emergency Order Paragraph 1.r., and to maintain financial and accounting records for Winola. *Id.*, Paragraph 1.h.

25. Based on the financial records that PAWC has maintained as Receiver, it appears unlikely that Winola will be able to pay the operations and maintenance costs and the capital expenses that PAWC has incurred as Receiver.

26. The Settlement would clarify the accounting treatment of certain types of expenses that PAWC has incurred as Receiver, and would clarify PAWC's ability to seek recovery in rates of those expenses, in the event that Winola is unable to pay those costs in full.

PAWC'S ACQUISITION OF WINOLA

27. The Commission has authority, pursuant to 66 Pa. C.S. § 529(a), to order a small water utility to be sold to a proximate capable public utility if the Commission makes certain determinations.

28. Winola is a small water utility, as defined in 66 Pa. C.S. § 529(m).

29. PAWC is a capable public utility, as defined in 66 Pa. C.S. § 529(m), that is proximate to Winola's System.

30. At the time PAWC was named Receiver of Winola, the System was in violation of statutory or regulatory standards affecting the safety, adequacy, efficiency or reasonableness of the service provided by Winola, as demonstrated by the Do Not Consume Order.

31. Between October 5, 2018 and November 28, 2018, Winola took no actions to lift the Do Not Consume Order.

32. The Do Not Consume Order would not have been lifted in October 2019 if the Commission had not named PAWC as Receiver in December, 2018.

33. If PAWC would cease to operate as Receiver, and Winola would resume operating the System, Winola could not reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

34. Maintaining PAWC as Receiver of the System on a long-term basis is not a practical or economically feasible alternative to the acquisition of Winola.

35. Other alternatives to acquisition (such as reorganization, merger, and acquisition by a municipality or municipal authority), have been considered by the Stipulating Parties, but found to be impractical or not economically viable.

36. As an existing public utility, PAWC is presumed to be legally, technically and financially fit to own and operate Winola's system.

37. As Receiver, PAWC has demonstrated that it is legally, technically and financially capable of acquiring and operating Winola's system.

38. In view of the large number of customers in PAWC's water system, and the relatively modest cost for PAWC to acquire the System and implement the Plan for Improvements (as hereinafter defined), the rates that PAWC charges its preacquisition customers will not increase unreasonably because of the acquisition of Winola.

THE PURCHASE PRICE OF THE SYSTEM

39. PAWC and Winola have entered into an Asset Purchase Agreement by which PAWC will acquire the System for \$1.00, subject to certain conditions, including but not limited

to the receipt of all necessary governmental approvals, including approvals from the Commission, DEP and the Township.

40. In view of the poor condition of the System, as noted in I&E's complaint at C-2018-2644592, the acquisition price is reasonable. 66 Pa. C.S. § 529(e).

PAWC'S PLAN FOR IMPROVEMENTS

41. In order to expedite the final resolution of these proceedings, PAWC has submitted a plan, including a timetable, for bringing Winola's System into compliance with applicable statutory and regulatory standards (the "Plan for Improvements"). Settlement, **Appendix C1**.

42. OCA and I&E have had an opportunity to review and comment on the Plan for Improvements. OCA requested additional information on the existing facilities and the planned improvements, and PAWC has provided the requested information. Settlement **Appendix C3**.

43. PAWC provided a copy of the Plan for Improvements to DEP and the Township, and notified them of the opportunity to comment on it before the Commission decides whether to approve it. DEP has submitted comments to PAWC and PAWC has accepted those comments. Settlement, **Appendix C2**. The Township has no objections to the Plan for Improvements. **Appendix C4**.

RATES UPON CLOSING

44. 66 Pa. C.S. § 529(f) permits the Commission to allow an acquiring capable public utility to charge and collect rates from the customers of the acquired small water utility pursuant to a separate tariff.

45. The rates proposed in the Settlement at ¶ 48b. are Winola's existing rates. Since those rates are not found in PAWC's existing tariff, the Settlement would permit PAWC to charge Winola's existing customers pursuant to a separate tariff.

46. Winola's customers do not presently have meters. Consequently, they do not have metered rates. The Settlement would provide for the installation of meters and the establishment of metered rates in the future.

**APPENDIX B FORM OF ORDER
APPROVING JOINT STIPULATION OF FACT**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ORDER APPROVING JOINT STIPULATION
OF FACT**

On June 2, 2020, Pennsylvania-American Water Company, Winola Water Company, the Office of Consumer Advocate and the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement (collectively, the “Stipulating Parties”) filed a “Joint Stipulation of Fact” (“Stipulation”) in the above-captioned proceedings. Each of the Stipulating Parties agreed to the veracity of the facts as listed in **Appendix A** of the Stipulation in order to provide the Commission with the factual basis necessary for approving the “Joint Petition for Approval of Settlement of All Issues” (“Settlement”), filed contemporaneously with the Stipulation. The Stipulation is attached to this Order. Aqua Pennsylvania, Inc., which intervened in these proceedings, does not oppose the Stipulation.

As this request is reasonable, it will be granted.

THEREFORE, IT IS ORDERED:

1. That the Stipulation, filed on June 2, 2020, is APPROVED; and

2. The facts listed therein are admitted into the record of these proceedings on the terms and conditions set forth in the Stipulation.

Date: _____

Joel H. Cheskis
Deputy Chief Administrative Law Judge