

**Application of Pennsylvania-American Water Company for Acquisition of  
the Wastewater Assets of Royersford Borough  
66 Pa. C.S. §1329  
Application Filing Checklist – Water/Wastewater  
Docket No. A-2020-3019634**

12. Provide a proposed tariff containing a rate equal to the existing rates of the seller at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

**AMENDED RESPONSE:**

See revised *pro forma* Tariff Supplement No. XX to Tariff Wastewater PA P.U.C. No. 16 of PAWC, Wastewater Division, containing an initial base rate equal to the existing rates of the Borough at the time of the acquisition. The revised *pro forma* Tariff is attached and marked as **Amended Appendix A-12**.

Section 1329(d)(1)(v) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1329(d)(1)(v), requires an applicant to include in an application “[a] tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition *and a rate stabilization plan, if applicable to the acquisition.*” (Emphasis added.) Section 1329(g) of the Code, 66 Pa. C.S. § 1329(g), defines a rate stabilization plan as “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” When an application includes a rate stabilization plan, the Commission requires an applicant to submit testimony, schedules and work papers to support the rate stabilization plan. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered Oct. 27, 2016) at 27.

Since the instant acquisition does not involve a rate stabilization plan, testimony, schedules and work papers supporting such a plan are not required. In this respect, there is no deficiency in the application. The instant application is like the application in *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority*, Docket No. A-2016-2580061 (Opinion and Order entered June 29, 2017), *reversed on other grounds, McCloskey v. Pa. PUC, 195 A.2d 1055 (Pa. Cmwlth. 2018)*, (“*Aqua/New Garden*”), which included a tariff that established rates equal to the existing rates for New Garden customers at the time of acquisition. The proposed tariff would remain in effect until new rates are approved by the Commission in a future base rate proceeding.

The Commission held that Aqua’s proposed tariff was not a rate stabilization plan, saying:

**Application of Pennsylvania-American Water Company for Acquisition of  
the Wastewater Assets of Royersford Borough**

**66 Pa. C.S. §1329**

**Application Filing Checklist – Water/Wastewater  
Docket No. A-2020-3019634**

The ALJ determined that the rate commitment provision contained in the APA does not trump the Commission's ultimate authority to set and allocate rates. We agree. Here, the APA provides firm, unqualified guarantees to the seller as a term of the APA.<sup>1</sup> However, it does not purport to hold rates constant or phase rates in over a period time after the next base rate case. It offers no tariff language for us to approve. Thus, we decline to hold that the rate commitment constitutes a rate stabilization plan pursuant to Section 1329(g) of the Code.

Aqua acknowledges that the Commission will ultimately decide the appropriate rates for the customers of the acquired utility in Aqua's next base rate case proceeding, while Aqua and its shareholders will bear any rate differential during the contract period stipulated in the APA. The Company asks that we render no ruling on this private contract provision and we see no reason to disagree. This provision was an arm's length negotiation between two independent parties and does not bind the future rate-setting authority of the Commission. Thus, as we discuss further below, we will adopt the ALJ's alternative recommendations pertaining to the allocation of revenue to the New Garden customers that might be in excess of the restrictions outlined in the APA. Accordingly, we shall deny Aqua's Exception No. 2, in part. *Aqua/New Garden* at 41-42. Section 7.03.(a) of the Asset Purchase Agreement in the instant application is not a rate stabilization plan for the same reasons.

Additionally, Section 7.03(a) does not create a rate stabilization plan for the reasons set forth in the Direct Testimony of Rod Neviraskas, PAWC St. No. 3, pp. 15-16:

PAWC will be charging the Borough's current rates (but not other charges) as the Company's base rates within the service territory. The APA provides that base rates shall not be increased until after the second anniversary of the Closing Date.

---

<sup>1</sup> Exh. C1 at § 7(b) ("... Buyer agrees that ... the [current] rate schedules ... shall remain the same as those Rates charged by Seller as of Closing ..." for two years initially.).

**Application of Pennsylvania-American Water Company for Acquisition of  
the Wastewater Assets of Royersford Borough**

**66 Pa. C.S. §1329**

**Application Filing Checklist – Water/Wastewater  
Docket No. A-2020-3019634**

The Borough is not included in PAWC’s base rate case that is currently pending before the Commission. The Company does not anticipate that the Borough’s rates will be held constant after the next base rate case and therefore the APA provision does not fall within the definition of a “rate stabilization plan” as defined by 66 Pa. C.S. § 1329. Interested parties will have an opportunity to participate in the first base rate case in which the System is included and address issues, including cost allocation, as appropriate.

PAWC was careful in negotiating the APA to respect the statutory authority of the Commission to set just and reasonable rates.

It is likely that the instant acquisition will not close until after the conclusion of PAWC’s pending base rate case, which means that the “next base rate case” for purposes of a rate stabilization plan will be the case *after* PAWC’s current case (including the nine-month suspension period in the “next base rate case”). PAWC’s pending rate case calls for a two-year multi-year rate plan. Section 7.03(a)’s two-year rate freeze will not hold rates constant or phase in rates after the “next base rate case.”

- a. Section 7.03(a), like the rest of the Asset Purchase Agreement, was determined through a process of arm’s length negotiations between a willing buyer and a willing seller. These parties were not affiliated with each other. They each made a business decision as to the provisions that would be acceptable to them.
- b. As explained in the Direct Testimony of Rod P. Neviraskas, the instant acquisition (including Section 7.03(a)) will have no immediate impact on the rates of PAWC’s existing customers. PAWC’s acquisition of the Royersford system has not been incorporated into PAWC’s pending base rate case.

**Application of Pennsylvania-American Water Company for Acquisition of  
the Wastewater Assets of Royersford Borough**

**66 Pa. C.S. §1329**

**Application Filing Checklist – Water/Wastewater  
Docket No. A-2020-3019634**

As such, PAWC’s existing customers will not be required to contribute to the revenue requirement of the Royersford system until the next following base rate case (except to the extent that the Commission approves PAWC’s proposed “Regionalization and Consolidation Surcharge” in the current base rate case, which would mitigate the revenue lag associated with acquisitions). PAWC expects to include Royersford’s wastewater operations in PAWC’s future base rate filings. Any impacts on the rates of PAWC’s existing customers would occur only upon Commission approval. In that proceeding, PAWC would have multiple tools available to it when proposing rates for customers. Of course, ultimate ratemaking authority remains with the Commission, and the Commission also has multiple tools available to it when setting rates.

- c. As discussed above, it is likely that the instant acquisition will not close until after the conclusion of PAWC’s pending base rate case. Consequently, rates for Royersford customers will likely increase in PAWC’s base rate case that is filed *after* PAWC’s pending case. Such rates must be approved by the Commission and all interested persons will have notice and an opportunity to be heard in the future base rate case.

