

November 12, 2021

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

In re: Docket No. R-2017-2624240, *et al.* (Remand)  
Pa. P.U.C., *et al.* v. The Newtown Artesian Water Company

Dear Secretary Chiavetta:

We are counsel to The Newtown Artesian Water Company in the above matter and are submitting, with this letter via electronic filing, the Joint Motion of the Company and the Office of Consumer Advocate to Stay Remand Proceeding. A copy of the Joint Motion is being served in accordance with the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)  
The Honorable Christopher P. Pell  
Deputy Chief Administrative Law Judge (via email, w/encl.)  
Thomas J. Walsh, III, Esquire (via email, w/encl.)

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Deputy Chief Administrative Law Judge  
Christopher P. Pell, Presiding**

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<b>Pennsylvania Public Utility Commission</b>	<b>:</b>	<b>Docket No. R-2017-2624240</b>
<b>Office of Consumer Advocate</b>	<b>:</b>	<b>Docket No. C-2017-2626954</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>Newtown Artesian Water Company</b>	<b>:</b>	

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**JOINT MOTION OF THE OFFICE OF CONSUMER ADVOCATE AND THE  
NEWTOWN ARTESIAN WATER COMPANY FOR  
STAY OF REMAND PROCEEDING**

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AND NOW come the Office of Consumer Advocate (“OCA”) and The Newtown Artesian Water Company (“Newtown”), (collectively, the “Moving Parties”), by their respective attorneys, to submit this Joint Motion for Stay of Remand Proceeding (“Joint Motion”). In support of their Joint Motion, the Moving Parties submit as follows:

1. This remand proceeding occurs as a result of the decision of the Supreme Court of Pennsylvania in *McCloskey v. Pa. P.U.C.*, 255 A.3d 416 (Pa. 2021) (“*McCloskey*”), addressing a question of statutory construction involving recently enacted Section 1301.1(a) of the Public Utility Code.

2. In separate proceedings involving several major electric utilities<sup>1</sup> and Newtown, the Public Utility Commission (“Commission”) concluded that Section 1301.1 does not require

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<sup>1</sup> The electric utilities are the FirstEnergy Companies: Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, hereafter (“FirstEnergy”).

changes to the calculation methodology for utilities' Distribution System Improvement Charges ("DSICs") as sought by the OCA.

3. The OCA appealed the Commission decisions to the Commonwealth Court. The Commonwealth Court, thereafter, in *McCloskey v. Pa. P.U.C.*, 219 A. 3d 1216 (Pa. Cmwlth. 2019) and *McCloskey v. Pa. P.U.C.*, 219 A. 3d 692 (Pa. Cmwlth. 2019) reversed and remanded the matters to the Commission.<sup>2</sup>

4. FirstEnergy and the Commission sought review of the Commonwealth Court decisions by the Pennsylvania Supreme Court.<sup>3</sup> After granting the appeals, the Supreme Court in *McCloskey* affirmed the decisions of the Commonwealth Court and remanded the matters to the Commission to require revision of tariffs and DSICs in accordance with Section 1301.1.

5. The Commission has noticed the opening of remand proceedings in the FirstEnergy proceeding and in the Newtown proceeding with prehearing conferences scheduled for December 2, 2021 in the FirstEnergy remand proceeding and for November 18, 2021 in the Newtown remand proceeding.

6. By this Joint Motion, the OCA and Newtown, as the Moving Parties, request that the Newtown remand proceeding be stayed until the conclusion of the FirstEnergy remand proceeding. The stay would include the cancellation of the prehearing conference scheduled for November 18, 2021, and the requirement for filing prehearing memoranda on November 15, 2021.

7. The Commission will be addressing the same issue in each remand proceeding – the implementation of the Supreme Court's decision in *McCloskey*. The OCA and Newtown

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<sup>2</sup> Newtown did not participate in the Commonwealth Court review proceeding.

<sup>3</sup> Newtown did not participate in the Supreme Court review proceeding.

submit that it is appropriate that the remand issue be addressed in the remand proceeding involving the four major Pennsylvania electric utilities that participated in the appellate cases and not the Newtown remand proceeding. A stay of the Newtown remand proceeding while the Commission addresses the remand issue in the FirstEnergy remand proceeding will promote judicial economy and conserve judicial resources.

WHEREFORE the Office of Consumer Advocate and The Newtown Artesian Water Company request that Deputy Chief Administrative Law Judge Pell grant this Joint Motion for Stay of Proceeding as aforesaid.

**THE NEWTOWN ARTESIAN WATER  
COMPANY**

By: 

Thomas T. Niesen, Esquire

**OFFICE OF CONSUMER ADVOCATE**

By: 

Erin L. Gannon

Senior Assistant Consumer Advocate

Date: November 12, 2021

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Deputy Chief Administrative Law Judge  
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<b>Pennsylvania Public Utility Commission</b>	:	<b>Docket No. R-2017-2624240</b>
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	:	
<b>v.</b>	:	
	:	
<b>Newtown Artesian Water Company</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 12<sup>th</sup> day of November 2021 served a true and correct copy of the foregoing Joint Motion for Stay of Proceeding, upon the persons and in the manner indicated below:

**VIA ELECTRONIC MAIL**

Christopher P. Pell  
Deputy Chief Administrative Law Judge  
Pennsylvania Public Utility Commission  
cpell@pa.gov

Erin L. Gannon  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
egannon@paoca.org



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Thomas T. Niesen, Esq.  
PA Attorney ID No. 31379  
*Counsel for The Newtown Artesian Water Company*