



July 25, 2022

VIA E-FILING

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities Under the Infrastructure Investment and Jobs Act; Docket No. P-2022-3032929

Answer of the National Association of Water Companies – Pennsylvania Chapter

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Answer of the National Association of Water Companies – Pennsylvania Chapter in the above-referenced matter. Copies have been served as shown on the attached Certificate of Service.

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

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "David P. Zambito", written over a faint, larger blue outline of the signature.

By: David P. Zambito
Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ:kmg

Enclosures

cc: Per Certificate of Service
J.T. Hand, President, National Association of Water Companies – Pa. Chapter
Marc Lucca – Incoming President, National Association of Water Companies – Pa. Chapter

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Requesting Initiation of a Proceeding on :
Federal Funding Opportunities for Utilities Under the : Docket No. P-2022-3032929
Infrastructure Investment and Jobs Act :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Answer of the National Association of Water Companies – Pennsylvania Chapter, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-FILING, E-MAIL AND FIRST CLASS MAIL:

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Respectfully,



Date: July 25, 2022

David P. Zambito, Esq.
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

VERIFICATION

I, DAVID LEWIS, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

7/25/22

David Lewis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Requesting Initiation of a Proceeding on	:	
Federal Funding Opportunities for Utilities Under	:	Docket No. P-2022-3032929
the Infrastructure Investments and Jobs Act	:	

**ANSWER OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER**

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), pursuant to 52 Pa. Code § 5.61 and the Secretarial Letter dated June 23, 2022 in this matter, to file this Answer to the Petition (“Petition”) filed on June 10, 2022 by the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and the Pennsylvania Utility Law Project (“PULP”) (collectively, the “Petitioners”). The Petition requests that the Pennsylvania Public Utility Commission (“Commission”) “initiate a proceeding to require utilities and allow interested parties to file reports and comments to the Commission related to federal programs and funding available to Pennsylvania utilities under the federal Infrastructure Investment and Jobs Act [(“IIJA”).” Petition at 1. Such a proceeding would not be a productive use of the Commission’s resources. Many of the IIJA programs are inapplicable to the water industry. In addition, other IIJA programs are relevant to small, disadvantaged water systems and private water utilities are not eligible. While some IIJA funding is available to water utilities, water utilities currently have existing processes in place for pursuing this funding. Accordingly, rather than initiating a formal proceeding, if the Commission is interested in learning more about IIJA funding opportunities, NAWC respectfully requests that the Commission sponsor educational sessions to give utilities, interested stakeholders, and regulators an opportunity to meet and discuss

state and federal funding opportunities that are available to utilities. The interests of the Commission, utilities, public advocates, and customers are generally aligned in obtaining available government funding and, accordingly, a cooperative approach (rather than a potentially-adversarial proceeding) is more appropriate.

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania that are regulated by the Commission.¹ Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, the Commission and other regulatory agencies, and the courts. NAWC thanks the Commission for this opportunity to file an Answer to the Petition.

II. ANSWER

1. The Petition references a number of programs authorized by the IIIA that are not applicable to the water industry. Similarly, other programs are available to small, disadvantaged water systems, but private water utilities are not eligible for such programs. While NAWC understands that certain IIIA funding will be applicable to water utilities, this funding will be available through PennVest programs that already exist, and as such, water utilities already have developed processes for applying for and obtaining this funding. For all of these reasons, NAWC believes a formal Commission proceeding to evaluate the use of IIIA funds is unnecessary.

¹ The members of NAWC are: Aqua Pennsylvania, Inc. (“Aqua”), Columbia Water Company, Newtown Artesian Water Company, Pennsylvania-American Water Company (“Pennsylvania-American”), The York Water Company (“York Water”), and Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania Inc.) (“Veolia”). In addition to water operations, several of the members operate Commission-regulated wastewater systems.

2. The Petition requests “a formal Commission proceeding focused on the [Act] and the funding opportunities it presents for the Commonwealth’s public utilities.” Specifically, the Petition asks the Commission to initiate a proceeding in which utilities would be required to file regular reports documenting their efforts to obtain IJA funding, the purposes for which they are seeking funding, the status of any applications, and conditions that must be met to obtain funding. The public and other stakeholders could then review these reports and provide input on each utility’s pursuit of funds pursuant to the Act. Finally, the proceeding would “establish a process for reviewing utility plans.”

A. The Petition fails to establish a current problem or a need for a formal proceeding. Utilities currently pursue state and federal funding without issue. By way of an example, when the Low Income Household Water Assistance Program (“LIHWAP”) was adopted as part of the American Rescue Plan Act, Pennsylvania water utilities worked closely with the Department of Human Services to ensure that LIHWAP funding was accessible to customers. As of June 30, 2022, over \$6,700,000 in LIHWAP grants have been distributed to customers of Aqua, Pennsylvania-American and Veolia, alone. LIHWAP provides an excellent example of NAWC members’ existing capabilities which allow them to take advantage of state and federal funding opportunities. A formal Commission proceeding that would result in additional, burdensome filing requirements would unnecessarily complicate a funding process that is currently working without issue. The board of directors of each utility is responsible for managing that utility in the public interest and has the responsibility to act prudently in deciding whether to pursue any particular federal or state funding opportunity (some of which may have unreasonable conditions attached).²

² The Commission should not assume the role of a utility’s super board of directors. *Peoples Cab Co. v. Pa. Pub. Util. Comm’n*, 137 A.2d 873, 878 (Pa. Super. 1957).

NAWC members already have processes in place for evaluating state and federal funding opportunities and additional formal requirements regarding this process are not required.

Additionally, numerous other statutes provide state and federal funding opportunities for utilities, but the Commission has never before established a proceeding of this nature. The Petition fails to explain why a proceeding is necessary at this time. Moreover, the Commission already has tools for reviewing and auditing utilities' efforts to obtain state and federal funding if the Commission has any concerns regarding utilities' use of such funds. The Petition fails to explain why IJA requires the unusual step of establishing an additional formal proceeding regarding the use of grant funding and new reporting requirements.

B. NAWC has concerns about the information that would be shared during such a formal proceeding and the information that would be included on reports that would be required to be filed with the Commission after this proceeding. To the extent there is IJA funding available to private utilities, it is possible that regulated utilities may be competing for the same limited government funds. If private utilities are asked to share information regarding their deliberative process for evaluating and applying for loan and grant funding, it could create antitrust concerns.

C. Rather than initiating a formal proceeding specific to the IJA, if the Commission is interested in learning more about IJA funding opportunities, NAWC respectfully requests that the Commission sponsor educational sessions³ at which interested utilities, stakeholders, and regulators can share information about available federal and state grants and loans. Such educational sessions would provide a collaborative and non-adversarial forum in which information can be shared about the different funding opportunities available to utilities, the

³ In addition to educational sessions, the Commission and other stakeholders should consider supporting efforts to have more parity in federal funding that would benefit utilities and their customers, such as supporting efforts to expand Clean Water State Revolving Funds to private providers (private providers are excluded from this low interest financing opportunity).

procedures for applying for funding from different programs, and the conditions that must be met if funds are received. Each stakeholder can use and share best practices at these sessions while maintaining confidentiality and avoiding antitrust concerns. If the Commission is interested in obtaining more information regarding IJA opportunities, NAWC recommends this more informal approach.

III. CONCLUSION

WHEREFORE, for all of the above reasons, NAWC respectfully requests that the Commission deny the Petition's request to initiate a formal proceeding. Instead, if the Commission is interested in learning more about IJA funding opportunities, NAWC respectfully requests that the Commission sponsor educational sessions to give utilities, interested stakeholders, and regulators an opportunity to meet and discuss state and federal funding opportunities that are available to utilities.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David P. Zambito", is written over a horizontal line.

David P. Zambito (PA ID No. 80017)

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Date: July 25, 2022