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March 27, 2023

VIA PUC SHAREPOINT SITE

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

In re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. § § 1102(a) and 1329, for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, the Borough of East Butler, and the Townships of Butler, Center, Connoquenessing, Oakland and Summit, in Butler County, Pennsylvania

Docket No: A-2022-3037047

Dear Secretary Chiavetta:

Enclosed for filing are the Responses of Pennsylvania-American Water Company ("PAWC") to the 66 Pa. C.S. Section 1329 Application Completeness Review of Pennsylvania-American Water Company – Wastewater Division Acquisition of the Butler Area Sewer Authority System Assets at Docket No. A-2022-3037047 Missing Application Information, dated March 16, 2023. Please note some responses are **CONFIDENTIAL** and should be treated as such.

Copies are being served upon the statutory advocates in accordance with the attached Certificate of Service and in accordance with the Commission's *Final Supplemental Implementation Order* entered February 28, 2019 at Docket No. M-2016-2543193.

PAWC respectfully requests that the Secretarial Letter conditionally accepting the Application for filing provide a due date for protests and notices of intervention, which is required on the form of notice approved by the Commission in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) and found at Application Appendix A-18-d.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,



Elizabeth Rose Triscari

cc: All Parties on the Attached Certificate of Service (*via OneDrive Link*)
Sean Donnelly (*via OneDrive Link*)

12. Checklist Item No. 12 – In response to Item Number 7 of the Application Completeness Review that requested that PAWC-WD amend the Application’s Appendix A-18-a to include copies of BASA resolutions, tariffs, agreements and/or contracts establishing BASA’s BOD5 and SS surcharge rates, PAWC-WD indicated that BASA never established in its Schedule of Rates either a BOD5 surcharge rate or SS surcharge rate, that no BASA customers are charged a BOD5 surcharge, and that the only BASA customer being charged a SS surcharge is Pennsylvania-American Water Company (PAWC) in the amount of \$0.315/lb. Also, Item Number 3 of the Application Completeness Review requested that PAWC-WD revise the Application’s Appendix A-12 to include a pro forma tariff supplement containing rates equal to the existing rates of the selling utility at the time of acquisition. In response, PAWC-WD indicated that the pro forma tariff supplement contains rates equal to the existing rates of the selling utility at the time of acquisition. However, PAWC-WD’s pro forma tariff supplement does not adopt BASA’s existing pollutant loading rates, including BASA’s BOD5 and SS surcharge rates. Please revise the Application’s Appendix A-12 to include a pro forma tariff supplement containing rates equal to the existing rates of the selling utility at the time of acquisition that includes a \$0.00 BOD5 surcharge, a \$0.00 SS surcharge for all customers except PAWC, and a \$0.315/lb. SS surcharge for PAWC for quarters where PAWC discharges more than 100,000 gallons per quarter and where average pollutant concentrations for that period are more than 350 mg/L SS.

Response:

As stated in PAWC’s initial response, pretreatment fees are miscellaneous fees and charges associated with PAWC’s Industrial Pretreatment Program (“IPP”) and are intended to recover actual costs incurred by PAWC in treating industrial wastewater (when such treatment is necessary for the protection of the system). Without such fees, industrial customers would have no meaningful incentive to pretreat their wastewater and PAWC would not be able to enforce its IPP. For purposes of Section 1329, BASA’s pretreatment fees (BOD5 and SS surcharges) are not “existing rates” that must be adopted by PAWC at Closing of the Transaction. After Closing, PAWC’s IPP and any associated pretreatment fees pursuant to the Commission-approved rules and regulations in PAWC’s tariff will apply to BASA customers (see Supplement No. 43 to Tariff Wastewater PA P.U.C. No. 16, Section U, 8. All Other Areas, at page 90). IPP is a form of rules and regulations, which PAWC is permitted to apply to BASA customers after Closing on the Transaction. PAWC is not required to adopt or implement BASA’s IPP or any associated pretreatment fees. Thus, BASA’s pretreatment fees were properly not included in the pro forma tariff filed with the Application.

PAWC infers from No. 12 above that TUS disagrees with PAWC’s substantive legal interpretation of Section 1329. However, pursuant to *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Tentative Supplemental Implementation Order entered September 20, 2018) at 15, TUS “does not review the veracity or substantive quality of

66 Pa. C.S. Section 1329 Application Completeness Review Pennsylvania-American Water Company – Wastewater Division Acquisition of Butler Area Sewer Authority Wastewater System Assets at Docket No. A-2022-3037047

information that an applicant submits to fulfill the threshold requirements of the Application Checklist.” TUS’s role is limited “to evaluate only whether the Application Checklist is complete and responsive to the data requested. It shall not refuse to perfect an application on the basis that the Bureau is not satisfied with the quality of the items submitted in response or whether additional information may later be required.”

It is not appropriate for TUS to make a substantive legal determination on what is and is not an existing rate for the purposes of Section 1329 at this preliminary stage of the proceeding, namely review of the Application for administrative completeness. Rather, such a substantive legal determination is properly made once the Application has been perfected and referred to the Office of Administrative Law Judge to develop the record and hold hearings. To the extent that any other party to the proceeding objects to PAWC’s interpretation of Section 1329, they and PAWC will have a full and fair opportunity to litigate the issue in the proceeding.

In addition, even if BASA’s pretreatment fees could properly be considered existing rates for the purposes of Section 1329, it is not correct to conclude that the BOD5 and SS fees are locked in at \$0 for everyone except PAWC under the Authority’s current rules. The Authority’s current rules state that BOD5 and SS fees may be charged (*i.e.*, the Authority has discretion whether and when to charge). PAWC should have the same discretion that currently exists. The Authority has historically set the fee via letter notification (as indicated by the PAWC letter). Requiring that pretreatment fees be set to \$0 for all BASA industrial customers is not only incorrect, but also bad policy, which discriminates against other customers and removes any incentive for industrial customers to pretreat their wastewater or comply with PAWC’s IPP.

For all of the reasons stated above, PAWC requests that TUS conditionally accept the Application with the pro forma tariff as initially filed as **Appendix A-12** and permit the legal issue of whether IPP pretreatment fees are “existing rates” under Section 1329 be decided by the Commission in the course of the proceeding. However, in order to avoid the risk of TUS rejecting the Application as not administratively complete and to avoid further delay, enclosed is a revised pro forma tariff at **Appendix A-12.1**, which reflects the changes that TUS has directed PAWC to make, despite those changes being contrary to its stated legal position. PAWC submits this amended pro forma tariff under protest solely to comply with TUS’s demands necessary for it to find the Application to be administratively complete, without conceding or waiving PAWC’s legal position and with a full reservation of rights with respect to the issue of whether IPP pretreatment fees are existing rates for the purposes of Section 1329. PAWC will raise this issue in the course of the proceeding to be properly determined by the Commission after the development of an evidentiary record and the opportunity for hearings.

66 Pa. C.S. Section 1329 Application Completeness Review Pennsylvania-American Water Company – Wastewater Division Acquisition of Butler Area Sewer Authority Wastewater System Assets at Docket No. A-2022-3037047

13. Checklist Item No. 22.a. – Item Number 9 of the Application Completeness Review requested that the Application demonstrate compliance with the Department of Environmental Protection (DEP) approved Act 537 Official Sewage Facilities Plans for the affected municipalities including the extent of the requested service territory. In response, PAWC-WD indicated that there have been several Sewage Facilities Planning Modules (SFPMs) approved by DEP after the August 27, 2009, approval of the Act 537 Plan Update that expanded BASA’s service territory. SFPMs are minor amendments to the Act 537 Plans, and a copy of the SFPMs are necessary to demonstrate compliance with BASA’s Act 537 Plans. As such, please provide the following:
- a. Copy of the SFPM(s) referenced in PAWC-WD’s response to Item Number 9 of the Application Completeness Review; and
 - b. Copy of the SFPM(s) approving development on Butler County Tax Map Parcel Number 052-66-1-0000, the parcels surrounding Grundman Drive in Connoquenessing Township, and Butler County Tax Map Parcel Number 060-2F104-19H-0000 along Mercer Road in Center Township as these areas do not appear to be in the DEP-approved Act 537 Plans submitted for the Application and do not appear to contain BASA Wastewater System assets.

Response:

- a. Please see **Amended Appendix A-22-a** for the Sewage Facility Planning Modules (SFPMs) referenced in PAWC-WD’s response to Item Number 9 of the Application Completeness Review. After further review of the SFPM for the Duffy Highlands Subdivision (attachment 13.a.7 Duffy Highlands), we identified an area of the proposed franchise territory map that needs to be revised. A portion of the proposed subdivision and the existing 8 homes that are referenced in the SFPM were not originally included in the proposed franchise territory mapping. Please see **Second Amended Appendix A-16-a through f** for the revised mapping.
- b. Please see **Second Amended Appendix A-22-a** for the Sewage Facility Planning Modules (SFPMs) approving development on Butler County Tax Map Parcel Number 052-66-1-0000, the parcels surrounding Grundman Drive in Connoquenessing Township, and Butler County Tax Map Parcel Number 060-2F104-19H-0000 along Mercer Road in Center Township. These parcels are served by BASA however, the facilities located on the parcels are privately owned.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a) and 1329, approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, and portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland, and Summit, in Butler County, Pennsylvania

Docket No. A-2022-3037047

In re: Application of Pennsylvania-American Water Company under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1329, for approval of the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of the assets related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority

Docket No. A-2023

In re: Petition of Pennsylvania-American Water Company, related to its acquisition of the wastewater collection and treatment system owned by the Butler Area Sewer Authority, for approval under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, to (i) collect a distribution system improvement charge, (ii) for book and ratemaking purposes, accrue Allowance for Funds Used During Construction for post-acquisition improvements not recovered through the distribution system improvement charge, (iii) for book and ratemaking purposes, defer depreciation related to post-acquisition improvements not recovered through the distribution system improvement charge, and (iv) include, in its next base rate case, a claim for transaction and closing costs.

Docket No. P-2023

In re: Filing by Pennsylvania-American Water Company under Section 507 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 507, of (i) the Asset Purchase Agreement By and Among Butler Area Sewer Authority and Pennsylvania-American Water Company, and (ii) three agreements with municipal corporations to be assumed by Pennsylvania-American Water Company upon closing of its acquisition of substantially all of the assets related to the wastewater collection

Docket Nos. U-2023-_____, *et al.*

and treatment system owned by the Butler Area Sewer Authority

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of March served a true copy of the foregoing Responses of Pennsylvania-American Water Company regarding the acquisition of the Butler Area Sewer Authority's wastewater treatment, transportation, and distribution facilities upon the parties, listed below and in the manner below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA ELECTRONIC MAIL (ONE DRIVE LINK) ON MARCH 27, 2023

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Christine Maloni Hoover, Esquire
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Respectfully submitted,



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