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July 26, 2023

Administrative Law Judge Marta Guhl
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
mguhl@pa.gov

**RE: *Application of Pennsylvania-American Water
Co. under Section 1102(a) and 1329 of the Pennsylvania
Public Utility Code to acquire the wastewater collection
and treatment system owned by the Butler Area Sewer
Authority and to furnish wastewater service to the public
in Butler County, Pennsylvania
Docket No.: A-2022-3037047***

Dear Judge Guhl:

Attached for electronic filing please find the Answer of Center Township and Summit Township to the Motion to Strike Rebuttal Testimony of (A) Donald Pringle Filed on Behalf of Municipal Protestant Center Township and (B) Wilfred Adams Filed on Behalf of Municipal Protestant Summit Township.

Copies have been served on the parties as indicated on the Certificate of Service.

Respectfully submitted,

Michael D. Gallagher, Esquire
PA I.D. No. 59237
Sean M. Gallagher, Esquire
PA I.D. No. 318872
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MDG:mt
Attachment

cc: Center Township Supervisors (*by email*)
Summit Township Supervisors (*by email*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF PENNSYLVANIA-AMERICAN WATER CO. UNDER SECTION 1102(a) AND 1329 OF THE PENNSYLVANIA PUBLIC UTILITY CODE TO ACQUIRE THE WASTEWATER COLLECTION AND TREATMENT SYSTEM OWNED BY THE BUTLER AREA SEWER AUTHORITY AND TO FURNISH WASTEWATER SERVICE TO THE PUBLIC IN BUTLER COUNTY, PENNSYLVANIA

DOCKET NO. A-2022-3037047

ANSWER OF CENTER TOWNSHIP AND SUMMIT TOWNSHIP TO MOTION OF BUTLER AREA SEWER AUTHORITY, THE CITY OF BUTLER AND THE TOWNSHIP OF BUTLER TO STRIKE REBUTTAL TESTIMONY OF (A) DONALD PRINGLE FILED ON BEHALF OF MUNICIPAL PROTESTANT CENTER TOWNSHIP AND (B) WILFRED ADAMS FILED ON BEHALF OF MUNICIPAL PROTESTANT SUMMIT TOWNSHIP

Filed on Behalf of Protestants:

**CENTER TOWNSHIP,
BUTLER COUNTY, PENNSYLVANIA
AND SUMMIT TOWNSHIP, BUTLER
COUNTY, PENNSYLVANIA**

Counsel of Record for these Parties:

Michael D. Gallagher, Esquire
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl

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 : Docket Nos. A-2022-3037047
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, portions of the Borough of East Butler, and portions :
of the Townships of Butler, Center, Connoquenessing, :
Oakland, and Summit, in Butler County, Pennsylvania :

**ANSWER OF CENTER TOWNSHIP AND SUMMIT TOWNSHIP TO MOTION OF
BUTLER AREA SEWER AUTHORITY, THE CITY OF BUTLER AND THE
TOWNSHIP OF BUTLER TO STRIKE REBUTTAL TESTIMONY OF (A) DONALD
PRINGLE FILED ON BEHALF OF MUNICIPAL PROTESTANT CENTER TOWNSHIP
AND (B) WILFRED ADAMS FILED ON BEHALF OF MUNICIPAL PROTESTANT
SUMMIT TOWNSHIP**

AND NOW, come Protestants, Center Township and Summit Township, by and through their Solicitors, Gallagher Law Group, and files the within Answer of Center Township and Summit Township to Motion of Butler Area Sewer Authority, the City of Butler and the Township of Butler to Strike Rebuttal Testimony of (A) Donald Pringle Filed on Behalf of Municipal Protestant Center Township and (B) Wilfred Adams Filed on Behalf of Municipal Protestant Summit Township and, in support thereof, aver as follows:

I. BACKGROUND

1. On July 20, 2023, BASA, the City of Butler and Butler Township jointly filed a Motion to Strike the Rebuttal Testimony of Supervisor (Chairman) Wilfred Adams of Summit Township and Supervisor Donald Pringle of Center Township as in contravention of the 52 Pa. Code § 5.243 requirements for Rebuttal Testimony.

II. ARGUMENT

2. The Movants assert that the Rebuttal Testimony is repetitive and should have been included in the Direct Testimony.

3. The Movants fail to identify what specific questions and answers are repetitive but, instead, set forth a bald assertion that the rebuttal testimony is repetitive. It is well accepted practice that a Motion has to provide facts essential to support the claim set forth in the Motion. *See, Horberg Enter. L.P. v. USA Recycling Indus.* (2019 Pa. Super. Unpub. LEXIS 712 (bald assertion of a correct address in a Motion to Strike is far less than what is required to sustain the burden of proof). *See also, Cmwlth v. Holmes* (2017 Pa. Super. LEXIS 4567), *appeal denied* (2018 Pa. LEXIS 2011) (bald assertion of discrimination does not support a claim of challenge to jury selection); *Rosemont Taxicab Co. v. Phila. Parking Auth.*, 68 A.3d 29 (Pa. Cmwlth. 2013) (bald assertion that 49 violations (actually citations) was “too many” lacks foundation); *Smith v. Miller*, 145 A. 901 (Pa. 1929) (bald assertion by party with the burden of proof is far less than what is required to sustain the burden of proof).

4. Moreover, failure by Movants to identify what specific testimony is at issue¹, necessarily requires a guess on the part of Respondents to be able to respond to the Motion.

¹ The testimony of both Messrs. Pringle and Adams are in a standard court reporter stye with numbered lines and page numbers.

5. Therefore, on the basis of lack of foundation and failure to not meet the burden of proof, alone, the Motion to Strike should be denied.

6. For example, Respondents assert that Rebuttal Testimony dealing with uses of the proceeds of the Proposed Transaction is duplicative. This assertion is very poorly worded and without pages and line numbers or identification like “first paragraph”, Respondents can only guess what Movants are referring to.

7. It is not appropriate for Respondents to guess in order to make a response. The burden of proof lies upon the Movants to establish a basis for the Motion, and that burden includes writing an intelligible averment with specific citations so that Respondents can answer.

8. Moreover, the testimony of Messrs. Adams and Pringle is not duplicative, nor can it be pigeonholed as Direct Testimony.

9. The unverified Motion also makes a factual allegation that the Respondents have had access to the Direct Testimony of Movants for weeks or months. The Movants are purely speculating as to the knowledge of Respondents, another bald assertion. The Protest of both communities was filed on June 30, 2023. The Prehearing Conference was only held on July 11, 2023, and Rebuttal Testimony was timely filed on July 18, 2023, as per the Administrative Law Judge’s direction. This time involved is a matter of days, not weeks. Moreover, the issue of time is irrelevant to the filing of Rebuttal Testimony.

III. CONCLUSION

WHEREFORE, showing these things, Respondents, Center Township and Summit Township, respectfully request the Administrative Law Judge to Deny the Motion to Strike the Rebuttal Testimony of (A) Donald Pringle Filed on Behalf of Municipal Protestant Center Township and (B) Wilfred Adams Filed on Behalf of Municipal Protestant Summit Township.

Respectfully submitted,

GALLAGHER LAW GROUP



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*Solicitors for Center Township,
Butler County, Pennsylvania and
Summit Township, Butler County,
Pennsylvania*

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VERIFICATION

I, Donald E. Pringle, of the Center Township Board of Supervisors hereby state that the facts above set forth 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. 2023

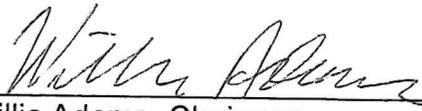


Donald E. Pringle

VERIFICATION

I, Willie Adams, Chairman of the Summit Township Board of Supervisors hereby state that the facts above set forth 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: 7.25.2023



Willie Adams, Chairman

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American :
Water Co. under Section 1102(a) and :
1329 of the Pennsylvania Public Utility :
Code to acquire the wastewater collection : Docket No. A-2022-3037047
and treatment system owned by the Butler :
Area Sewer Authority and to furnish :
wastewater service to the public in Butler :
County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of July, 2023 served a true copy of the foregoing Answer of Center Township and Summit Township to Motion of Butler Area Sewer Authority, the City of Butler and the Township of Butler to Strike Rebuttal Testimony of (A) Donald Pringle Filed on Behalf of Municipal Protestant Center Township and (B) Wilfred Adams Filed on Behalf of Municipal Protestant Summit Township upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ON JULY 26, 2023

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