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February 5, 2025

VIA ELECTRONIC FILING

Ms. Rosemary Chiavetta, Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

In re: Regulations Governing the Public Utility Commission's General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings) - Docket No. L-2023-3041347

Dear Secretary Chiavetta:

Pursuant to your Secretarial Letter of January 13, 2025, enclosed please find Pennsylvania-American Water Company's Comments on the above-referenced matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Harrold".

Teresa K. Harrold

cc: Tiffany Tran, Law Bureau (*via electronic mail*)
Colin W. Scott, Law Bureau (*via electronic mail*)
Karen Thorne, Law Bureau (*via electronic mail*)
Parties on the Attached Certificate of Service (*via electronic mail*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Regulations Governing the Public Utility :
Commission's General Provisions, 52 Pa. Code :
Chapters 1, 3, and 5 (relating to Rules of : **Docket No. L-2023-3041347**
Administrative Practice and Procedure; Special :
Provisions; and Formal Proceedings) :

CERTIFICATE OF SERVICE

I hereby certify that I this day serving the above-referenced filing upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code §1.54 (relating to service by a party).

SERVED VIA ELECTRONIC MAIL ON FEBRUARY 5, 2025

Darryl Lawrence, Esquire
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(via electronic mail)

Steven C. Gray, Esquire
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**Attorney for Pennsylvania-American
Water Company**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|---------------------------|
| Regulations Governing the Public Utility | : | |
| Commission’s General Provisions, 52 Pa. Code | : | |
| Chapters 1, 3, and 5 (relating to Rules of | : | Docket No. L-2023-3041347 |
| Administrative Practice and Procedure; Special | : | |
| Provisions; and Formal Proceedings) | : | |

COMMENTS OF PENNSYLVANIA-AMERICAN WATER COMPANY

Pennsylvania-American Water Company (“PAWC” or the “Company”) submits these Comments in response to the Clarified Notice of Proposed Rulemaking Order (“NOPR”) entered by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) on August 22, 2024, at the above-reference docket and published in the Pennsylvania Bulletin on December 7, 2024. In the NOPR, the Commission proposes changes to Sections 1, 3, and 5 of its regulations. The Company’s Comments regarding the NOPR are included in the remainder of this document.

I. INTRODUCTION

The Commission last revised Sections 1, 3, and 5 of its regulations in 2006.¹ After a series of stakeholder working groups discussing potential revisions to the regulations, the Commission initiated this formal rulemaking on November 9, 2023.² The NOPR issued on August 22, 2024 clarified several issues within the Notice of Proposed Rulemaking that was previously issued on November 9, 2023. After Pennsylvania Bulletin publication of the NOPR on December 7, 2024,

¹ *Final Rulemaking For the Revision of Chapters 1, 3, and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission*, Docket No. L-00020156 (Final Rulemaking Order entered January 4, 2006).

² *Regulations Governing the Public Utility Commission’s General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings*, Docket No. L-2023-3041347 (Notice of Proposed Rulemaking adopted November 9, 2023).

the Commission issued a Secretarial Letter stating that stakeholders' comments and reply comments related to the NOPR are due on February 5, 2025 and March 6, 2025, respectively.

PAWC is a regulated public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service are furnished by the Company to the public in a service territory encompassing more than 417 communities in 37 counties across the Commonwealth. PAWC serves a combined population of over 2,300,000. As a regulated public utility, PAWC is often engaged in matters that are governed by Sections 1, 3, and 5 of the Commission's regulations.

II. COMMENTS

PAWC agrees with the Commission that it is timely and appropriate to review and revise its regulations in Chapters 1 through 5 of the Commission's regulations. The majority of the Commission's proposed changes are reasonable and update the regulations to reflect current naming conventions (*e.g.*, replacing "Office of Trial Staff" with the "Bureau of Investigation and Enforcement") or practices that have evolved since the regulations were last revised in 2006 (*e.g.*, referencing "livestreaming" of the Commission's public meetings). The Company only has a handful of comments and recommended changes below, which PAWC believes would improve the final regulations.

First, the Commission recommended several changes to its regulations at Sections 1.21 and 1.22 of the PUC's regulations that will create more flexibility for representation before the Commission. The Commission is proposing to permit small businesses and partnerships to appear *pro se* before the PUC in adversarial proceedings when they currently must be represented by legal

counsel in such proceedings. PAWC does not object to the additional flexibility created by these regulations but is proposing one clarification.

Specifically, the regulations clearly provide that corporations shall be represented by legal counsel or certified legal interns in adversarial proceedings. By contrast, in nonadversarial proceedings, the Commission's proposed regulations state that corporations may be represented by officers, partners, and in some cases, by paralegals working under the direct supervision of an attorney. It is not explicitly stated that corporations may be represented by legal counsel in nonadversarial proceedings. It is common practice for parties to be represented by legal counsel in both adversarial and nonadversarial proceedings at the Commission. Although nonadversarial proceedings may begin with no dispute among the parties, such proceedings can result in future adversarial proceedings and parties should have the option of allowing an attorney who is familiar with the law to represent them and protect their interests. As recognized by the Commission in the NOPR, significant Pennsylvania caselaw exists explaining the necessity of attorney representation for corporations.³ In the final regulations, the Commission should clarify in Sections 1.21 and 1.22 that a party is permitted to be represented by an attorney in both adversarial and nonadversarial proceedings.

Second, in Section 1.32(b)(2)(v), the Commission proposes to require that electronic filings "be filed and served as a searchable PDF." While the Company agrees that searchable PDF format is the preferable filing type, Adobe Acrobat and similar PDF creation software cannot always accurately recognize text on older documents, such as old territory maps or property deeds. In recognition of these software limitations, the Company recommends that this regulation be modified to state that electronic filings should "be filed and served as a searchable PDF where

³ NOPR at 13-14.

feasible.” This same “where feasible” qualifying language is used in other parts of this regulation as well and provides the flexibility needed when uploading different types of documents.

Third, the Commission proposes a substantive change to Section 5.245 of its regulations by adding the following language: “Dismissal of a complaint, petition or application with prejudice of the complainant, petitioner, or applicant for the failure to appear is prohibited.” The Company opposes this new language for the reasons set forth in Commissioner Coleman’s Motion dated November 9, 2023 at the above-referenced docket. Under 66 Pa.C.S. § 332(f), dismissal with prejudice is required when a party fails to attend a scheduled hearing and does not demonstrate that their failure to attend was unavoidable.⁴ The Commission does not have the authority to adopt a regulation that contradicts Section 332(f) of the Public Utility Code. Where a party fails to attend their hearing without a legitimate excuse for the absence, Section 332(f) is clear that the party is prohibited from reopening the disposition of any matter that was the subject of that hearing in the future. The Public Utility Code properly recognizes the public policy concern of allowing a party to file the same case over and over again, which wastes Commission and other parties’ time and resources. Accordingly, the Commission should delete proposed Section 5.245(e) from its regulations.

Finally, the Commission proposes to repeal Section 5.412a of its regulations, which currently requires parties to file written direct testimony at the Commission within 30 days following the evidentiary hearing. The PUC explains that this regulation has created confusion for the Secretary’s Bureau when it receives pre-served testimony from the Court Reporter, as well as

⁴ “Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.” 66 Pa.C.S. § 332(f).

additional copies from the parties filed at the electronic docket. While the Commission believes repeal of this regulation will resolve this confusion, the Commission requests that parties comment on how to handle testimony that is modified at the hearing, and therefore, differs from the preserved testimony provided to the Court Reporter. Because written testimony corrections at hearings are relatively common, the Company recommends modifying the PUC's proposed Section 5.412 to include a new sub-section that directs parties to file any written testimony modified at evidentiary hearings at the Commission within 30 days following the hearing. The regulation should further provide that parties must state in their cover letters that the written testimony was modified at the evidentiary hearing, so the Secretary's Bureau is alerted that the filed copy of the written testimony is the correct version.

III. CONCLUSION

PAWC thanks the Commission for the opportunity to submit these Comments on its proposed regulations. PAWC looks forward to continuing to work with the Commission and other stakeholders throughout this rulemaking process moving forward.

Respectfully submitted,



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Date: February 5, 2025