



Melanie J. El Atieh

Director, Corporate Counsel
800 West Hersheypark Drive

Hershey PA 17033

Phone: (717) 531-3362

Facsimile: (717) 531-3399

melanie.elatieh@amwater.com

August 10, 2016

VIA E-FILING

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

**Re: Implementation of Section 1329 of the Public Utility Code;
Docket No. M-2016-2543193**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned docket are the comments of Pennsylvania-American Water Company regarding the Pennsylvania Public Utility Commission's Tentative Implementation Order entered on July 21, 2016.

Should you have any questions concerning this filing, please contact me. Thank you.

Respectfully,

Melanie J. El Atieh

Enclosure

Cc: (via email with Word-compatible format)
Stanley E. Brown, Assistant Counsel, Law Bureau
Jani Tuzinski, Manager-Water/Wastewater Section, Bureau of Technical Utility Services

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tentative Implementation Order re: : Docket No: M-2016-2543193
Implementation of Section 1329 of the :
Public Utility Code :

**COMMENTS OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

I. INTRODUCTION

On July 21, 2016, the Pennsylvania Public Utility Commission ("Commission") entered a Tentative Implementation Order ("Tentative Implementation Order" or "TIO") at the above-captioned docket inviting interested parties to provide comments on the tentative proposals set forth in the Tentative Implementation Order and to offer additional recommendations for the Commission's consideration.¹ In its Tentative Implementation Order, the Commission proposed procedures and guidelines to address the application process and carry out the ratemaking provisions of Section 1329 of the Pennsylvania Public Utility Code ("Code"). The Tentative Implementation Order states that it shall be effective in the interim until a final implementation order is issued by the Commission, and that the purpose of the Tentative Implementation Order is to have provisional procedures and guidelines in place for the near term and to solicit public comment on such procedures and guidelines. The Commission stated that upon review of the comments, the Commission will issue a final implementation order addressing any necessary changes to the provisional procedures and guidelines.

¹ The Tentative Implementation Order was published in the *Pennsylvania Bulletin* on August 6, 2016, and comments are due August 10, 2016. The Tentative Implementation Order does not provide for the submission of reply comments.

Pennsylvania-American Water Company (“Pennsylvania American”), a public utility engaged in the business of collecting, treating, storing, supplying and distributing water to the public in the Commonwealth of Pennsylvania, and collecting, treating, transporting and disposing of wastewater for the public in the Commonwealth, respectfully submits the following comments and recommendations in response to the Commission’s Tentative Implementation Order.

II. GENERAL COMMENTS

A. Background on Section 1329 of the Public Utility Code

Act 12 of 2016 was signed into law by Governor Tom Wolf on April 14, 2016, and took effect on June 13, 2016. Act 12 amended Chapter 13 of the Code (pertaining to rates) by adding Section 1329 to the Code that establishes a voluntary process to determine the fair market value of an acquired water or wastewater system, and to establish the rate base for the acquired assets at the lesser of the fair market value or the negotiated purchase price for such assets.

Through the passage of Act 12, the General Assembly enacted an alternative ratemaking process that will encourage, throughout the Commonwealth, the purchase and sale of water and wastewater systems owned by municipalities and authorities. As noted on page 2 of the Tentative Implementation Order, the sale of water and wastewater systems to investor-owned public utilities can enable necessary investments in infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. Pennsylvania American also notes that the acquisition of such systems by investor-owned utilities enables Commission-regulated utilities to expand their customer base and realize economies of scale through the expansion of service – to the benefit of all customers.

Importantly, Section 1329 allows the acquiring public utility to earn on the acquired system assets at a value equal to the lesser of the fair market value of the acquired assets or the negotiated purchase price for such assets, rather than the depreciated original cost of such assets. Also, importantly, Section 1329 permits the acquiring public utility to collect a distribution system improvement charge (“DSIC”) during the time following the closing of the system acquisition and the public utility’s next base rate proceeding. Section 1329 also allows an acquiring public utility to accrue allowance for funds used during construction (“AFUDC”) on post-acquisition improvements to the acquired system after the asset is placed in service through the effective date of the acquiring public utility’s next base rate case, or four years, whichever is earlier. Additionally, for an acquiring public utility’s post-acquisition improvements that have not been included in the calculation of a DSIC, Section 1329 permits depreciation of such assets to be deferred for book and ratemaking purposes.

Below are Pennsylvania American’s comments on the proposals set forth in the Commission’s Tentative Implementation Order.

B. Summary of Comments

Section 1329 amends the Public Utility Code so that it no longer requires certain acquired utility property be included in rate base at depreciated original cost – the cost when first devoted to public use less accumulated depreciation – and therefore represents a significant departure from the methodology under Section 1311(b) requiring that utility rate base property be set at depreciated original cost. This means that for acquisitions subject to Section 1329, a utility will be permitted to earn a return on and of its investment when acquiring water and wastewater assets from a municipality or authority. Yet, Section 1329’s foundational shift away from

Section 1311(b) is not recognized in the Commission's Tentative Implementation Order. Specifically, the Commission has proposed that the licensed engineer selected by the buying and selling utilities essentially complete a depreciated original cost study as part of its assessment required under Section 1329(a)(4), and that the utility's Section 1102 application state the original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations. These proposals represent an attempt to improperly fasten the original cost methodology under Section 1311(b) to the new requirements of Section 1329. As a result, these proposals create an implementation process for Section 1329 that is contrary to the language of Section 1329, confusing and administratively burdensome.

Section 1329 also amends the Public Utility Code by requiring the Commission to issue an order on a utility's Section 1102 application seeking approval of an acquisition within six months of the utility filing its application containing the five additional attachments required under Section 1329(d)(1).² This means that for Section 1102 acquisitions subject to Section 1329, similar to a Section 1308 base rate proceeding which has a nine month statutory deadline, an acquiring public utility will have predictable certainty as to when it can expect to receive a final order from the Commission. This change in the law will better enable the acquiring water and wastewater utilities to conduct transition planning and capital budgeting for the acquired systems. Yet, the Commission's Tentative Implementation Order does not implement the six month deadline mandated by Section 1329. Specifically, the Commission has proposed on page 11 of the Tentative Implementation Order to not start the clock on the six month deadline until

² These five additional attachments include as follows: "(i) Copies of the two appraisals performed by the utility valuation experts under subsection (a).(ii) The purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.(iii) The ratemaking rate base determined pursuant to subsection (c)(2). (iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition." 66 P.a. C.S. § 1329(d)(1).

Commission staff has reviewed the application and deemed it perfected and in full compliance with all items on the Commission's proposed Application Filing Checklist. Pennsylvania American is very concerned that such proposal could create undue delay of the statutorily-mandated six month deadline. Although Pennsylvania American believes that this proposal is likely best removed from the final implementation order, it acknowledges the desire of the Commission of wanting to give due consideration to complete applications and therefore offers proposals within these comments to address Pennsylvania American's concerns.

Finally, on page 11 of the Tentative Implementation Order, the Commission asserts that due process considerations require notification to the affected customers of the acquired system and recommends that utilities be required to submit as part of its Section 1102 application a copy of a bill insert sent to the selling utility's customers notifying the selling utility's customers of the proposed acquisition. Pennsylvania American notes that for applications filed by an acquiring public utility under Section 1102 prior to the enactment of Act 12, the utility has not been required to send a bill insert notifying the selling utility's customers of the proposed acquisition prior to the closing of the transaction. Thus, it is not clear as to how "due process considerations" following the passage of Act 12 now require a bill insert to be sent to customers of the non-jurisdictional municipality or authority. Moreover, Pennsylvania American believes this proposal presents jurisdictional concerns for the Commission. It is not clear whether the Commission may directly require a non-jurisdictional municipality or authority to provide notice via bill insert to its customers of the proposed transaction, nor is it clear whether the Commission may indirectly require it by essentially forcing the acquiring public utility to require as part of its contract or asset purchase agreement with the non-jurisdictional municipality or authority that the selling utility must provide notice via bill insert to the selling utility's customers in

accordance with the Commission's proposals herein. Municipalities and authorities not subject to the Public Utility Code are governed by applicable state law in terms of holding public meetings and providing notice to the public served by their systems. Provided that such notification requirements are met by the municipality or authority, and provided that the Commission-regulated public utility publishes the notification in the newspaper having general circulation in the affected area, and the application is published in the *Pennsylvania Bulletin*, due process to the affected customers should continue to be adequately addressed.

The above summary is intended to highlight the major concerns of Pennsylvania American, which are also discussed in more detail below. In addition to the major concerns summarized above, Pennsylvania American provides additional specific comments below on the proposals set forth in the Commission's Tentative Implementation Order.

III. SPECIFIC COMMENTS

A. Section 1329(a) – Process to establish fair market value of selling utility (TIO, pp. 3-6)

1. Commission's List of UVEs - § 1329(a)(1) (TIO, pp. 3-5)

On pages 3 through 4 of the Tentative Implementation Order, the Commission discusses its proposals with respect to the Commission's list of UVEs as required under Section 1329(a)(2) of the Code, stating as follows:

To this end, the Commission will invite interested persons and entities to file for consideration as a UVE, similar to our process for Conservation Service Providers. Via Secretarial Letter dated July 21, 2016, at this docket number, prospective UVEs are directed to complete the Application Form for Registration

as a Utility Valuation Expert, which is attached to this Tentative Implementation Order and is available on the Commission's website.

To be included on the Commission's registry, UVEs must establish their qualifications. Applicants must be able to demonstrate that they have the education and experience necessary for providing utility valuations. Applicants must also acknowledge a fiduciary duty to provide a thorough, objective, and fair valuation. Applicants will be expected to demonstrate compliance with Pennsylvania laws and to demonstrate their financial and technical fitness, such as professional licenses, technical certifications, and/or names of current or past clients with a description of dates and types of services provided by the Applicant,. In order to maintain a list of UVEs in good standing, the Commission will require applicants to renew their applications biennially. Consistent with the Commission's treatment of the registry of Conservation Service Providers, we shall establish a fee of \$125 for initial UVE applications and a fee of \$25 for renewal and/or updates.

Pennsylvania American does not have a comment on any of the Commission's proposals with respect to the registry list for UVEs. However, Pennsylvania American notes that in the early stages of implementation of Act 12, the UVEs list may be comprised of individuals or firms that meet the Commission's requirements as specified above and may have experience in appraisals of other types of property, for example, real estate, yet may not have significant experience in appraisals of water and wastewater system appraisals.

2. Engineer's Assessment - §1329(a)(4) (TIO, pp. 5-6)

Section 1329(a)(4) of the Public Utility Code provides:

The acquiring public utility or entity and selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of

the selling utility. The assessment shall be incorporated into the appraisal under the cost approach required under paragraph (3).

66 Pa. C.S. § 1329(a)(4).

On pages 5 through 6 of the Tentative Implementation Order, the Commission discusses the requirement under Section 1329(a)(4) stating as follows:

In addition, the buyer and seller shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. Section 1329(a)(4). The assessment shall be incorporated into the appraisal under the cost approach. The engineer's assessment must include the original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations pursuant to 66 Pa. C.S. § 1311.

Specifically, Section 1311(b) states:

***(b) Method of valuation.**--The value of the property of the public utility included in the rate base shall be the original cost of the property when first devoted to the public service less the applicable accrued depreciation as such depreciation is determined by the commission.*

The engineer's assessment shall be developed in accordance with Commission procedures and practices that conform with the National Association of Regulatory Utility Commissioners System of Accounts for water and wastewater systems. The approach shall consider the following to establish the cost assessment:

- *An inventory of the used and useful utility plant assets to be transferred. Identify separately any utility plant that is held for future use.*
- *A list of all non-depreciable property such as land and rights-of-way.*

- *The inventory is to be developed from available records, maps, work orders, debt issue closing documents funding construction projects, and other sources to ensure an accurate listing of utility plant inventory by utility account.*
- *An estimate of years of construction or acquisition for the utility plant by year and account.*
- *The use of current prices restated as costs to the Original Cost price level including related accrued depreciation. Where cost data is not available, the use of appropriate cost trend indices in accordance with recognized industry practices.*
- *Costs for utility plant compiled by utility account by year of installation.*
- *A calculation of accumulated depreciation by estimated service life applicable for comparable utility plant.*
- *A report explaining the process for developing the cost assessment.*

The first, second, third and fourth bullets on page 6 of the Tentative Implementation Order appear to implement the requirement under Section 1329(a)(4), as these bulleted items relate specifically to the provision of a verified asset inventory list to be provided by the licensed engineer selected by the buying and selling utility. The UVEs' appraisals will rely on the inventory list prepared by the licensed engineer when appraising the assets under the USPAP cost approach. Thus, Pennsylvania American agrees that the items in the first, second, third and fourth bullets should be included in the engineer's assessment.

However, the last four bullets of the Commission's list on page 6, as admittedly explained in the Tentative Implementation Order, relate to a valuation of the assets per Section 1311(b) of the Public Utility Code based on the depreciated original cost of such assets. As such,

Pennsylvania American proposes deleting the last four bullets. Otherwise, the implementation of these items will create a result that is contrary to the language of Section 1329. Under Section 1329, the UVEs, not the engineer, are tasked with the responsibility of valuing the acquired assets under the USPAP standards, employing the cost, market and income approaches. Thus, it is not clear what purpose will be served by the licensed engineer performing a depreciated original cost valuation of the acquired assets.

Moreover, it is Pennsylvania American's general understanding that the cost approach of the USPAP requires the UVEs to appraise the assets based on the replacement costs of the assets less amounts calculated for accumulated depreciation and obsolescence. This method of valuation is markedly different from the depreciated original cost method of valuation under Section 1311(b). As such, the Commission's proposed requirements set forth in the fifth, sixth, seventh and eighth bullets will likely create a conflict between the engineer's assessment and the valuation to be performed by the UVEs under the cost approach of the USPAP. Thus, in order to rationally implement the requirements of Section 1329 and to save on duplicative and unnecessary work, Pennsylvania American recommends striking the fifth, sixth, seventh and eighth bullets from page 6 of the TIO.

B. Section 1329(b) – Utility Valuation Experts (TIO, pp. 6-7)

On pages 6 through 7 of the Tentative Implementation Order, the Commission discusses the requirements under Section 1329(b) stating as follows:

Important in this subsection is the UVEs' fee limitation of 5% of the fair market value of the selling utility or a fee approved by the Commission. Applications will be required to contain ample justification both within the application itself as

well as the direct testimony accompanying the application regarding how the UVEs' fee was derived. The Administrative Law Judge will make a recommendation on the fee based upon the record as a part of the adjudication.

Pennsylvania American commends the Commission for recognizing the importance of the discretion afforded to the Commission in approving fees higher than the fee cap of 5% of fair market value of the system. In most cases, especially in the context of the larger water and wastewater systems, the fee cap will likely serve as a reasonable limitation on the UVEs' fees. However, in certain circumstances, especially in the context of smaller water and wastewater systems acquisitions, the fee cap could produce unreasonably low fees compared to what the UVEs could obtain in the non-regulated marketplace for providing similar appraisal services, and thus discourage participation by UVEs in performing appraisals of the selling utility systems in accordance with Section 1329 of the Code. Thus, Pennsylvania American believes the Commission's discretion to approve fees above the cap is critically important to the successful implementation of Act 12.

However, Pennsylvania American recommends that the Commission in its final implementation order remove the proposal that the utilities be required to provide "ample justification" in their applications and replace it with a discussion regarding the utility's burden of proof, consistent with the discussion below. As the proponent of the application, the applicant will bear the burden of proof in the application filed under Section 1102(a) and Section 1329. *See* 66 Pa. C.S. § 332. To meet this burden, the applicant must show it is entitled to have the acquisition approved under the applicable legal standards (which such standards are discussed *infra* in more detail) by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa Cmwlth. 1990), *alloc. denied*, 529 Pa. 654 (1992). If the

applicant presents evidence found to be of greater weight than the other parties, it will have carried its burden of proof. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). That is, the applicant's evidence must be more convincing, by even the smallest amount, than that presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The Commission should refrain from creating or applying a new or different evidentiary standard with respect to the approval of the application or any component piece of the application.

Furthermore, there should be a presumption in favor of UVE fees that are within the 5% of fair market value fee cap since such fees are clearly permitted for recovery by the acquiring public utility under Section 1329(b)(3). Therefore, Pennsylvania American recommends that the Commission clarify that the applicant will bear the burden of proof with respect to supporting UVEs' fee only when such fees are higher than the 5% fair market value limitation set forth in Section 1329(b)(3).

C. Section 1329(c) – Ratemaking rate base (TIO, pp. 7-8)

On page 8 of the Tentative Implementation Order, the Commission states as follows:

As stated above, the rate base to be incorporated will be the lesser of the purchase price or the fair market value of the seller. The acquiring entity need not be a public utility. Under Section 1329(g), a person, partnership or corporation that is not currently a public utility may acquire a selling utility if the entity or its affiliate has filed an application for a certificate of public convenience (CPC) with the Commission. The application for a CPC may be filed simultaneously but no later than the same day as the application for Section 1329 acquisition. Due to the compressed review period provided for the Section 1329 application, if a Section 1102 application is required, we strongly encourage that

it be filed in advance of the Section 1329 application to the extent possible, and consolidated consideration will be given to the extent possible.

Pennsylvania American does not have any comment on this section of the Tentative Implementation Order. Please see subpart G of these comments below for a discussion of the applicable legal standards to an application filed by an “entity.”

D. Section 1329(d)– Acquisitions by a Public Utility (TIO, pp. 3, 8-11, 14-16)

1. Application Filing Checklist - §§ 1102, 1329(d)(1) (TIO, pp. 10-11)

On pages 10 and 11 of the Tentative Implementation Order, the Commission discusses the items that an acquiring public utility must include in its completed application and attached a proposed Application Filing Checklist (“Checklist”) to assist acquiring public utilities and the Commission in determining whether an application is complete.

Attached as Appendix A³ are Pennsylvania American’s proposed revisions to the Commission’s proposed Checklist.

First, Pennsylvania American proposes revisions to the labeling of the Checklist to indicate that the proposed checklist applies to applications filed by acquiring public utilities. As discussed further below in subpart G of these comments, Pennsylvania American recommends that the Commission develop a separate checklist applicable to an application filed by an “entity” given that the entity must meet additional fitness requirements in its Section 1102 application.

Next, Pennsylvania American recommends grouping certain Checklist items together to

³ Appendix A-1 attached hereto, shows Pennsylvania American’s proposed revisions in red-line format. Appendix A-2 shows, in a clean version, the revised Application Filing Checklist with Pennsylvania American’s proposed revisions incorporated.

better identify the enabling authority for each item listed in the Checklist. Specifically, the items should be grouped based on the specific items required to be filed under Section 1329(d)(1)(i)-(v), the items identified by the Commission to further assist with the Commission's review of the application under the other parts of Section 1329 of the Code, and the items identified by the Commission to assist with the Commission's review of the application under 66 Pa. C.S. § 1102, with regard to the utility's request for approval of the acquisition and expansion of service territory. Such proposed re-grouping of the Checklist items is shown in Appendix A, Parts A, B, C and D attached hereto.

Additionally, found below are Pennsylvania American's recommendations with respect to the specific items found in the Commission's proposed Checklist:

Checklist Item No. 3.b. and 20, Affected Persons

In these sections of the Checklist, the Commission proposes the applicant identify and provide service of the application on the following: *“a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application.”* Prior to the passage of Act 12, the Secretary's Bureau has not typically required the acquiring utility applicants to serve a copy of its Section 1102 application on water and wastewater providers within 1 mile of the service area proposed in the application. Rather, service has been required on providers that abut the service area proposed in the application. Pennsylvania American proposes striking the requirement that service be made on providers within 1 mile of the service area as it seems arbitrary.

Checklist Item Nos. 6 and 9, Verified Statement re: UVEs

Pennsylvania American recommends combining Checklist Item Nos. 6 and 9 into a single Checklist Item, as shown in Appendix A, Checklist Item C.10.

Checklist Item No. 7, UVE Fees

In Checklist Item No. 7, the Commission proposes the applicant: “*State the fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation justifying the subject fee amounts.*” Consistent with the discussion above in these comments under subpart III.B., Pennsylvania American respectfully recommends revising “*and provide documentation justifying the subject fee amounts*” to “and provide documentation supporting fee amounts exceeding the fee limitation set forth in Section 1329(b)(3).”

Checklist Item No. 8, UVE Affiliation with Buyer/Seller

In Checklist Item No. 8, the Commission proposes the applicant: “*Provide a verification statement that the utility valuation expert has no affiliation with the buyer or seller as specified in 66 Pa. C.S. § 1329.*” Pennsylvania American notes that the language in this Checklist item essentially rewrites the statutory provisions of Section 1329(b)(2), which provide as follows:

The utility valuation experts shall not:

- (i) derive any material financial benefit from the sale of the selling utility other than fees for services rendered; or
- (ii) be an immediate family member of a director, officer or employee of either the acquiring public utility, entity or selling utility within a 12-month period of the date of hire to perform an appraisal

66 Pa. C.S. § 1329(b)(2).

The plain language of Section 1329(b)(2) does not require that the UVEs have “no affiliation” with the buyer or seller; rather, it requires that the UVEs shall not “derive any material financial benefit from the sale of the selling utility other than fees for services rendered” or “be an immediate family member of a director, officer or employee of either the acquiring public utility, entity or selling utility within a 12-month period of the date of hire to perform an appraisal.” Thus, Pennsylvania American respectfully recommends the following language in replacement of the sentence appearing in the Checklist: “Provide a verification statement that the utility valuation expert meets the affiliation requirements as specified in 66 Pa. C.S. § 1329(b)(2)(i)-(ii).”

Checklist Item No. 11, Transaction and Closing Costs

Section 1329(d)(1)(iv) requires the acquiring public utility to include the transaction and closing costs incurred by the acquiring public utility that will be included in rate base. This requirement appears in Checklist Item No. 11 as follows: “*Quantify the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base shown.*”

Importantly, Pennsylvania American notes that the transaction and closing costs to be quantified in the application will be, in part, based on estimates because not all of the actual costs will be incurred before the application is filed. At the time of filing the application for approval of the acquisition, the utility will not have completed all of the pre-closing items nor will it have closed on the transaction. Thus, the utility will still incur transaction and closing costs after it files the application, including but not limited to, finalizing details relating to due diligence and a number of ancillary agreements, as well as prosecuting the application before the Commission

which may entail the incurrence of outside counsel and expert witness fees.

In addition, Pennsylvania American proposes deleting the word “shown” from this Checklist Item, as it is unclear as to its meaning. The transaction and closing costs will be included in the acquiring public utility’s rate base as permitted under Section 1329(d)(1)(iv); however, these costs will be separate and in addition to the “ratemaking rate base” determined under Section 1329(c)(2) of the Code. Thus, removing “shown” from this requirement will help clear up any confusion in this regard.

Checklist Item No. 14, Plant In Service

Checklist Item No. 14.a proposes the applicant: “*State the original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations.*” Essentially, this requirement dictates the completion of an original cost study. For applications not subject to Section 1329, this requirement is certainly relevant given the requirements of Section 1311(b) of the Code, to set the rate base for such assets at depreciated original cost.⁴ As discussed above, however, Section 1329 represents a fundamental shift from the current methodology under Section 1311(b) requiring that utility rate base property be set at depreciated original cost. Applications filed under Section 1329 require that the plant in service for rate base purposes be established at the lower of the fair market value of such system assets, as established by averaging the UVEs’ appraisals of such plant under USPAP, or the negotiated purchase price of such system assets. Therefore, the requirements to provide original cost and accumulated depreciation are not relevant for a Section 1102 application filed pursuant to

⁴ However, for applications not subject to Section 1329, it is common practice for the Commission to permit the acquiring utility to undertake an original cost study after the application has been approved but prior to the acquiring utility’s next base rate case, given that the original cost study will be relevant in the acquiring utility’s next base rate case for purposes of establishing base rates.

Section 1329.

As a substitute for this requirement, Pennsylvania American supports the applicant being required to provide a copy of the engineer's assessment providing a full inventory listing of the tangible property to be acquired, as consistent with the recommendations set forth above in these comments. Pennsylvania American's proposed changes, as discussed above, are shown in Appendix A, Part C.13.

Checklist Item No. 14.b proposes the applicant: "*State the DEP-permitted productive or treatment capacity of sources or treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.*" Pennsylvania American proposes striking "pipe sizes" from this Checklist item. Many acquired systems have been depreciated over a half century or longer and the records for such systems are not thorough or complete. As a result, requiring the utility to provide "pipe sizes" can be too onerous on the applicant and asserts that this level of detail is not needed at the stage of the acquisition of the system or to determine if the transaction is in the public interest. Therefore, Pennsylvania American proposes to strike "pipe sizes" from the Application Filing Checklist as shown in Appendix A.

Checklist Item No. 14.c proposes the applicant: "*State the elevations of major facilities and service areas.*" Pennsylvania American proposes to strike this Checklist item on the grounds of being too onerous and not relevant to the public interest standard for approving the application.

Checklist Item no. D. 14.d proposes the applicant: "*State the approximate time schedule for installation of the various component facilities.*" Pennsylvania American recommends adding

the phrase “as applicable” at the end of this sentence, since this would apply only in the instance where new or replacement facilities are being proposed as part of the acquisition.

Checklist Item No. 15, Map of Service Area

Checklist Item No. 15.d. requires “*a written description of the boundaries for the service territory utilizing bearing angles and distances.*” Pennsylvania American recommends inserting “metes and bounds” before “description” since this appears to be the intended meaning here.

Checklist Item No. 16, Customers

Checklist Item No. 16.a. proposes the applicant: “*State the utility’s actual number of customers by class and quantify the related consumption or gallons treated in the current calendar year and future number of connections anticipated for the next 10 years.*” Pennsylvania American recommends striking “*and future number of connections anticipated for the next 10 years,*” as this would be onerous and merely speculative prior to the closing of the acquisition. Moreover, the number of future connections is not needed to determine if the transaction is in the public interest.

Checklist Item No. 17, Rates

Checklist Item No. 17.d. proposes the applicant: “*Provide a copy of the notification sent to affected customers describing the filing and the proposed rates.*” Consistent with Pennsylvania American’s comments found below under subpart III.E.3, Pennsylvania American recommends changing this to read as follows: “Provide a copy of the sample notification to be sent by the acquiring utility to affected customers following the closing of the acquisition describing the change of ownership.” Please refer to Pennsylvania American’s comments found

below under subpart III.E.3 for additional discussion as to this recommendation.

Checklist Item No. 18, Cost of Service

Checklist Item Nos. 18, a-e, proposes the applicant provide a number of items relating to the selling utility's cost of service. In addition, on page 11 of the Tentative Implementation Order, the Commission states that "*applications must address cost of service, including copies of the seller's most recently audited financial statements.*"

Pennsylvania American believes that this section of the Checklist is not relevant in applications filed under Section 1102 and Section 1329, as the acquiring public utility is required under Section 1329(d)(4) to adopt the selling utility's rates at the time of closing of the acquisition until such time new rates are approved in the utility's next base rate case. Thus, Pennsylvania American proposes striking Checklist Item No. 18 in its entirety.

However, to the extent the Commission deems Checklist Item No. 18 relevant, Pennsylvania American believes it will be relevant only to the extent a rate stabilization plan is applicable to the acquisition per Section 1329(d)(1)(v). Pennsylvania American notes here that 1329(d)(5) requires the selling utility's cost of service to be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility's next base rate case proceeding. 66 Pa. C.S. § 1329(d)(5). Pennsylvania American believes, however, that the requirement under Section 1329(d)(5) to incorporate the selling utility's cost of service into the revenue requirement of the acquiring public utility as part of the acquiring utility's next rate case applies only in the context where the public utility proposes in the rate case to adopt the selling utility's existing rates (as a separate rate zone, for example) or proposes to effectuate a rate

stabilization plan.⁵ In such instances, incorporating the selling utility's cost of service will essentially provide the necessary support for adopting the selling utility's rates or the applicable rate stabilization plan. In other words, if the acquiring public utility were to propose in its next rate case to set rates for the affected system's customers equal to the system average or single tariff rates, then there would be no need for the acquiring public utility to adopt the selling utility's cost of service as the selling utility's cost of service would have no relevance under the base rates proposed by the acquiring public utility to recover the public utility's cost of service or total revenue requirement.

Checklist Item No. 21, Other Requirements

Checklist Item No. 21 proposes that the applicant "*demonstrate compliance*" with the following items listed. Pennsylvania American recommends deleting the language "demonstrate compliance" as this is too onerous and it is unclear as to how such demonstration can be achieved. This proposed change is shown in Appendix A.

Checklist Item No. 21.a. proposes the applicant, for wastewater system acquisitions: "*demonstrate compliance with the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities (including the extent of the requested service territory).*" Again, Pennsylvania American recommends deleting the language "*demonstrate compliance*" as this is too onerous and it is unclear as to how such demonstration can be achieved. Pennsylvania American suggests replacing this with the requirement to provide a verified statement by the acquiring utility that the requested service territory complies with the DEP Act 537 Plan for the

⁵ Moreover, Pennsylvania American notes here that it believes that the meaning of the selling utility's "cost of service" as used in Section 1329(d)(5) of the Code means the selling utility's "total revenue requirement," and not the cost allocation structure that may serve as the basis for the selling utility's existing rates by customer class.

affected municipalities, of it is not, for the applicant to provide a verified statement explaining why it may not be in compliance with DEP Act 537 Plan.

Checklist Item No. 21.e. proposes the applicant: *“Provide a copy of the affected municipality and county’s comprehensive plans or provide evidence the application complies with the subject plans.”* Public utilities are not subject to local regulation under municipality and county comprehensive plans. However, recognizing the Commission’s policy statement at 52 Pa. Code § 69.1101, Pennsylvania American proposes to revise this requirement to the following: *“Provide a copy of the affected municipality and county’s comprehensive plans or provide a verification statement that the application complies with the subject plans, or if not, explain why not.”*

Checklist Item No. 23, Asset Purchase Agreement

This section of the Checklist proposes that the applicant provide a copy of the Asset Purchase Agreement (“APA”) governing the acquisition and proposes that the APA contain the items listed in Checklist Item Nos. 23 b, c, d and e, Pennsylvania American respectfully recommends that the Commission delete all of the items under this section except for the requirement for the applicant to provide a copy of the APA itself. The terms and conditions of the APA are a matter of contract between the acquiring public utility and the selling utility. To the extent the Commission is essentially seeking for a full inventory list of the assets to be transferred as a result of the acquisition, Pennsylvania American respectfully believes the Commission’s intent here can be satisfied by the applicant providing a copy of the engineer’s assessment as part of its application, as suggested earlier in these comments.

Checklist Item No. 23.e. proposes that the applicant's APA contain "*a copy of all agreements to be assumed by the buyer as part of the acquisition.*" Pennsylvania American respectfully recommends striking this item from the Checklist. For the most part, the buyer will be assuming supply and services agreements as part of the acquisition in order to ensure the smooth transition in operations post-closing. Some of the agreements contain confidentiality provisions that will require the applicant to seek a protective order. Being required to file these vendor/service agreements has the potential to be too onerous on an applicant and it is not clear how it is relevant to the public interest standard. To the extent a certain agreement to be assumed by the acquiring public utility is relevant to the public interest standard in approving the acquisition, the applicant will bear the burden of disclosing the existence of such agreement in its application and a party and/or staff will be free to seek a copy of such agreements in discovery. Moreover, to the extent a certain agreement to be assumed by the utility is required to be filed under Section 507 of the Public Utility Code, the applicant will be required to file it. However, to the extent the Commission believes such a requirement is relevant to the utility's initial application, Pennsylvania American respectfully recommends that the Commission refrain from requiring the utility to contain a copy of all such agreements within the APA itself. Typically, a listing of the agreements to be assumed by the buyer will be found in a schedule to the APA, but not copies of all such agreements themselves.

2. Commencement Date for Statutory Deadline (TIO, pp. 10-11)

Section 1329(d)(2) of the Public Utility Code, 66 Pa. C.S. § 1329(d)(2), provides as follows: "The [C]ommission shall issue a final order on an application submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1)."

On page 11 of the Tentative Implementation Order, the Commission proposes that:

Upon review of the Section 1329 application and staff's determination that the filing is perfected and in full compliance with all items on the Application Filing Checklist, the Commission will notify the applicants of the actual accepted filing date, which will then commence the six-month time frame for the proceeding.

Pennsylvania American certainly appreciates the Commission's desire to protect its due consideration of the application within the six-month statutory review period. However, the statute is clear that the six month deadline for a final Commission Order begins on the date the Section 1102 application containing the five attachments listed in Section 1329(d)(1) is filed. Pennsylvania American is concerned that without appropriate limitations, this proposal in the Tentative Implementation Order could cause undue delay of the statutorily-mandated deadline to review an application and issue a Commission decision within six months.⁶

⁶ The Commission's proposal to implement the procedure as proposed in the Tentative Implementation Order may be construed as an *ultra vires* act by the Commission. An administrative agency in Pennsylvania is a creature of statute and can exercise only such powers as the General Assembly has granted expressly or by necessary implication. *Commonwealth, Dep't of Env'tl. Res. v. Butler County Mushroom Farm*, 499 Pa. 509, 454 A.2d 1 (1982); *Green v. Milk Control Comm'n*, 340 Pa. 1, 16 A.2d 9 (1940).

Moreover, Pennsylvania American is concerned that the Commission's proposal will create due process considerations for regulated utilities as the Commission's refusal to consider the utility's application unless all of the items of the proposed Checklist are met is a new requirement not prescribed in Section 1329 that essentially establishes a binding norm on Commission-regulated utilities without complying with the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *reenacted and amended by* Act of June 30, 1989, P.L. 73, *as amended*, 71 P.S. §§745.1-745.15, and the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§1102-1602. When an administrative agency establishes a "binding norm," the agency must comply with the procedural requirements of both the Commonwealth Documents Law and the Regulatory Review Act. *See generally Pa. Human Relations Comm'n v. Norristown Area Sch. Dist.*, 473 Pa. 334, 346, 374 A.2d 671, 678 (1977); *R.M. v. Pa. Housing Finance Agency*, 740 A.2d 302, 307 (Pa. Cmwlth. 1999); *Giant Food Stores*, 713 A.2d at 179. A binding norm is, in essence, a regulation with the full force and effect of law; a general statement of policy, by contrast, "does not establish a binding norm, but merely serves as an announcement to the public of a policy which the agency hopes to implement in future rulemaking or adjudications." *Manor v. Dep't of Pub. Welfare*, 796 A.2d 1020, 1026 (Pa. Cmwlth. 2002) (citing *Norristown*, 473 Pa. at 351, 374 A.2d at 680). To determine whether an agency has established a binding norm, courts must evaluate (1) the plain language of the provision at issue, (2) the manner in which it has been implemented by the agency, and (3) whether the provision restricts the agency's discretion. *See R.M.*, 740 A.2d at 907; *Manor*, 796 A.2d at 1026.

In order to ensure the timely processing of an application, Pennsylvania American asserts that as the proponent of the application, the applicant will bear the burden to file an application that will satisfy the public interest standard by a preponderance of the evidence, as discussed *infra* in subpart G of these comments. Further, Pennsylvania American recognizes that the Commission may reject a Section 1102 application for processing within the six-month deadline required under Section 1329 for the application's failure to include one or more of the five attachments required to be attached to such application under Section 1329(d)(1). However, since the other items on the Commission's Checklist are not required under the Public Utility Code or prescribed as being applicable to acquiring public utilities in Commission regulations, an application that is missing such items should not cause delay in starting the clock on the six month statutory deadline dictated under Section 1329.

In other words, if a Section 1102 application contains all of the five attachments required under Section 1329(d)(1) but is otherwise missing some of the other items listed in the Commission's proposed Checklist, the application should not be rejected for processing under the six month deadline dictated by Section 1329(d)(2); rather, any missing information should be taken into consideration by the parties in testimony and briefs, as well as the ALJ in its recommended decision, and by the Commission in its final order in determining whether there has been a demonstration by the applicant, by a preponderance of the evidence, in meeting the applicable public interest standard, as discussed *infra* in subpart G of these comments.

Thus, Pennsylvania American recommends the following:

- The filing date of the application will commence the six-month statutory deadline required under Section 1329(d)(2).

- The Commission should issue a notice to the applicant no later than Day 5 following the filing date (the same deadline for sending the application to the *Pennsylvania Bulletin*) indicating whether: (1) the application is accepted as complete under Section 1329(d)(1) for processing within six-months; or (2) rejected for processing within the six month timeline for failure to attach one or more of the requirements under Section 1329(d)(1). The Commission’s deficiency notice provided to the applicant should clearly identify the missing items from Section 1329(d)(1) of the Public Utility Code.
- A failure by the Commission to provide notice by Day 5 will result in the application being “deemed” accepted as complete for processing under the six-month statutory deadline.

Although Pennsylvania American believes that the Commission’s proposal in the Tentative Implementation Order to not start the clock on the six month deadline until the application is accepted as complete by the Commission is likely best removed from the final implementation order, Pennsylvania American believes that its recommendations above should help balance against the risks created by the Commission’s proposal in the Tentative Implementation Order for causing undue delay and due process considerations.

3. Due Process for Affected Customers (TIO, p. 11)

On page 11 of the Tentative Implementation Order, the Commission asserts that “*due process considerations require notification to the affected customers*” and proposes that:

When the application is published in a newspaper, the publication shall note that the period for filing protests shall be as soon as possible but no later than the last

day of the protest period set forth in the Pennsylvania Bulletin. Accordingly, within seven (7) days of the filing the application, the applicant shall file with the Commission: (1) proof of newspaper publication of the notification of the filing; and (2) a copy of the bill insert notifying the selling utility's customers of the proposed acquisition. The Secretary may impose additional notice requirements as may be warranted.

With respect to the newspaper publication of the application, Pennsylvania American recommends that the proof of newspaper publication be required by Day 22 of the application timeline, as shown in Appendix B attached to these comments. This recommendation is based on the requirement to publish in a newspaper of general circulation in the affected areas once a week for two consecutive weeks. Moreover, publication of the application in the newspaper should not occur until after the Secretary's Bureau issues the Secretarial Letter assigning a docket number to the case.

With respect to the Commission's proposal that the acquiring public utility submit a copy of a bill insert notifying the selling utility's customers of the proposed acquisition, Pennsylvania American notes that for applications filed by an acquiring public utility under Section 1102 prior to the enactment of Act 12, public utilities have not been required to notify the selling utility's customers of the proposed acquisition by bill insert. Thus, it is not clear as to how "due process considerations" following the passage of Act 12 now require a bill insert to be sent to customers of the non-jurisdictional municipality or authority. Moreover, Pennsylvania American believes this proposal presents jurisdictional concerns for the Commission. It is not clear whether the Commission may directly require a non-jurisdictional municipality or authority to provide notice via bill insert to its customers of the proposed transaction, nor is it clear whether the Commission

may indirectly require it by essentially forcing the acquiring public utility to require as part of its contract or asset purchase agreement with the non-jurisdictional municipality or authority that the selling utility must provide notice via bill insert to the selling utility's customers in accordance with the Commission's proposals herein. Municipalities and authorities not subject to the Public Utility Code are governed by applicable state law in terms of holding public meetings and providing notice to the public served by their systems. Provided that such notification requirements are met by the municipality or authority, and provided that the Commission-regulated public utility publishes the notification in the newspaper having general circulation in the affected area, and the application is published in the *Pennsylvania Bulletin*, due process to the affected customers should be adequately addressed.

With that said, however, Pennsylvania American believes it is critically important that its customers be sufficiently informed of an acquisition and the change of ownership. After the transaction closes, Pennsylvania American would support being required to send a bill insert to the customers of the acquired system notifying the customers of the change of ownership and also would support including a sample bill insert as part of its application for review by the Commission that would be used by the utility following the closing of the transaction to notify customers served by the acquired system.

4. Proposed Model Timeline - § 1329(d)(2) (TIO, pp. 9, 14-15)

On page 9 of the Tentative Implementation Order, the Commission stated:

Section 1329(d)(2) requires the Commission to issue a final order on an application submitted under Section 1329 within six months of the filing date of an application meeting the requirements of subsection (d)(1). For the

Commission to meet the six-month deadline, normal time lines must be compressed. A table establishing the necessarily compressed time line is provided [on page 15].

On page 14 of the TIO, the Commission stated:

Due to the six-month time line required by Section 1329, normal time lines must be compressed. In an effort to allow more time for drafting briefs, the exception period necessarily must be shortened. The table [on page 15] shows the time line the Commission intends to use as a guideline and assumes that the last public meeting before the six-month deadline is 15 days prior to that deadline. Actual time required may be slightly more or less depending upon applicable circumstances, such as the proximity of the filing date of the application and prehearing conference notice in the Pennsylvania Bulletin, the availability of hearing dates and the complexity/length of the hearing, the intervention of weekends and holidays, the availability of scheduled public meetings, and any unforeseen or other events that impact due consideration of the application within the six-month period.

On page 15 of the TIO, the Commission proposes a model timeline.

Pennsylvania American generally supports the Commission's proposed model timeline to compress the interim deadlines for accomplishing the six-month deadline required under Section 1329(d)(2) of the Code. Pennsylvania American also agrees with the Commission that the six-month deadline is mandated by the statute and thus the proposed model timeline should serve only as a guideline for achieving a final Commission order within the six-month deadline. Thus, Pennsylvania American agrees that the actual procedural dates established in an application proceeding will need to take into consideration weekends, holidays and the availability of scheduled public meetings in order to meet the six month deadline mandated by Section

1329(d)(2). For example, the actual time period for the preparation of briefs by the parties as well as exceptions/reply exceptions may need to be shortened as circumstances dictate in order to meet the statutorily-mandated deadline. Pennsylvania American also notes that the time period allotted to the Administrative Law Judge's ("ALJ's") preparation of a recommended decision as well as the Commission's preparation of a final order may need to be shortened in order to comply with this statutory requirement.

Attached as Appendix B are Pennsylvania American's specific proposed revisions to the model timeline. Pennsylvania American proposes increasing the deadlines for rebuttal and surrebuttal testimony by five days each⁷ to ensure parties the ability to develop a complete record and also proposes subsequent revisions in the timeline⁸ to address the impact of increasing the time for prepared testimony.⁹

Importantly, Pennsylvania American recognizes that the Commission's proposed model timeline applies in the instance where an application is protested. Not all applications will be contested and adjudicated before an ALJ, however. Uncontested applications will need to be assigned to the appropriate Commission Bureau (typically, the Bureau of Technical Utility Services ("TUS")) for review and preparation of a Commission order. In the case of an uncontested application, the time allotted in the proposed timeline for the preparation and

⁷ However, it is possible the parties to a proceeding may agree, and the presiding ALJ may approve, to set a shortened time period for the preparation and submission of rebuttal and surrebuttal testimony.

⁸ As for briefs, the Commission's proposed timeline proposes a total of approximately 30 days for main briefs and reply briefs. Pennsylvania American recommends keeping this time frame, as it will allow for 20 days for main briefs and 10 days for reply briefs. The Commission proposes a shortened 10-day period for exceptions and a 10-day period for reply exceptions. Pennsylvania American recommends shortening the reply exceptions period to 7 days.

⁹ Finally, Pennsylvania American recommends that the Commission's timeline take note of the applicant's right to present oral rejoinder at the evidentiary hearing in response to the surrebuttal testimony submitted by the other parties. Moreover, to save time, the Commission could eliminate surrebuttal with the company rebuttal being the last testimony submitted.

submission of direct testimony by the other parties, rebuttal testimony, surrebuttal testimony, oral rejoinder, evidentiary hearings, briefs, the ALJ recommended decision, exceptions and reply exceptions will not be required. Thus, for uncontested applications filed under Section 1329, Pennsylvania American believes it is possible for a final Commission order to be issued in a time period that is shorter than the six month deadline mandated by Section 1329(d)(2). Pennsylvania American's recommendations for the completion of the Commission's review of an uncontested application and timeline for the issuance of a final Commission order are shown in Appendix B.

5. Service of Application on Affected Parties (TIO, p. 16)

On page 16 of the Tentative Implementation Order, the Commission proposed as follows:

At the time of filing, the applicant shall cause a complete copy of the application with exhibits and supporting material to be served by registered or certified mail, return receipt requested, upon:

- (1) Each city, borough, town, township county and related planning office which is included, in whole or in part, in the proposed service area.*
- (2) A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application.*
- (3) The statutory advocates and DEP's central and applicable regional offices.*

Except as described below, the Commission's proposals with respect to service of the application are accomplished today by acquiring public utility-applicants of Section 1102 applications based on the requirements of the Secretary's Bureau. Typically, however, such

service is accomplished after receipt of the Commission's Secretarial Letter assigning a docket number. Pennsylvania American does not oppose serving a copy of the application on the same date as the filing of the application, but questions whether it would be more efficient to wait to accomplish service until a docket number is assigned. Pennsylvania American also supports serving a copy on the Bureau of Investigation and Enforcement, the Bureau of TUS and the Office of ALJ, given the compressed timeline, as suggested in Appendix A attached hereto.

Moreover, as discussed above, prior to the passage of Act 12, the Secretary's Bureau has not typically required the acquiring utility applicants to serve a copy of its Section 1102 application on water and wastewater providers within 1 mile of the service area proposed in the application. Rather, service has been required on providers that abut the service area proposed in the application. Pennsylvania American proposes striking the requirement that service be made on providers within 1 mile of the service area as it seems arbitrary.

6. Filing for Protective Order (TIO, p. 16)

On page 16 of the Tentative Implementation Order, the Commission stated as follows:

If proprietary information is included in the application, it shall be noted in the Application Filing Checklist. If a protective order is desired, it shall be requested prior to the filing of the application. The acquiring utility and other parties remain free, however, to exchange proprietary information at the outset of the proceeding pursuant to a non-disclosure agreement.

As shown in Appendix B, Pennsylvania American recommends that the requirement to file a protective order be no later than Day 2 following the issuance of the Secretarial Letter assigning a docket number. At that point, the docket number will be assigned and a copy of the

application will be served on all appropriate parties (with proprietary information redacted, as appropriate until such time as a non-disclosure agreement or protective order is in place).¹⁰ Filing for a protective order prior to filing the underlying application to which the protective order will govern will potentially create confusion among the Secretary's Bureau, ALJ and parties as to which application the motion for protective order belongs. Thus, to require the applicant to file for a protective order prior to the filing of the application could present due process considerations. Recognizing the need to compress the timeline for consideration of a protective order, Pennsylvania American recommends that the applicant be required to file a motion for a protective order no later than two days following the receipt of the Secretarial Letter acknowledging the applicant's filing, as shown on Appendix B.

E. Section 1329(e) – Acquisitions by Entity (TIO, pp. 8, 11-12)

On pages 8, 11 through 12 of the Tentative Implementation Order, the Commission discusses the requirements of Section 1329(e) and the Commission's proposed procedures and guidelines related thereto. On page 12 of the Tentative Implementation Order, the Commission discusses the burden of proof applicable to applications filed by an entity.

Pennsylvania American does not have any comment on this section of the Tentative Implementation Order. Please see subpart G of these comments below for a discussion of the applicable legal standards to an application filed by an "entity."

¹⁰ Or, in the event the Commission believes it is better for the applicant to accomplish service on all affected parties after a docket number is assigned, then the motion for protective order can be served on the parties simultaneously with a copy of the complete application, all under the same docket number.

F. Section 1329(f) – Postacquisition projects (TIO, pp. 12-13)

On pages 12 through 13 of the Tentative Implementation Order, the Commission discusses how Section 1329(f) permits the acquiring public utility’s post-acquisition improvements that are not recovered through the DSIC to accrue through AFUDC. As explained in the TIO, the acquiring public utility may accrue AFUDC until the asset has been in service for four years or until the asset is included in the utility’s next rate base case, whichever is earlier. Additionally, as explained in the TIO, depreciation on the acquiring utility’s post-acquisition improvements that has not been included in the calculation of a DSIC will be deferred for book and ratemaking purposes. Finally, as explained in the TIO, the acquiring utility will be required to keep proper accounting in separate and appropriate business records.

Pennsylvania American supports the Commission’s discussion in the Tentative Implementation Order relating to Section 1329(f) of the Code.

G. Scope and Standard of Review for Applications filed by an Acquiring Public Utility or Entity under Section 1102 (TIO, p. 3)

On page 3 of the Tentative Implementation Order, the Commission stated that “*Section 1329 provides for significant changes in the way the Commission examines and approves acquisitions of municipal and authority systems.*” Given this statement in the Tentative Implementation Order, Pennsylvania American believes it is important that the Commission clarify in the final implementation order the applicable legal standards that will apply to a Section 1102 application filed by an acquiring public utility or entity with the attachments required under Section 1329(d)(1).

For applications filed under Code Section 1102, 66 Pa. C.S. § 1102, the Commission may issue a certificate of public convenience for an applicant upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). The standard requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The “substantial public interest” standard is satisfied by a preponderance of the evidence. *Popowsky v. Pa. Pub. Util. Comm’n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

Additionally, Code Section 1103, 66 Pa. C.S. § 1103, requires that the acquiring public utility-applicant demonstrate how it is technically, financially and legally fit to own and operate the system being acquired by the applicant. *Seaboard Tank lines v. Pa Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlt. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d. 240, 243 (Pa. Super. 1958). However, as a currently certificated public utility, an acquiring public utility’s fitness is presumed. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlt. 1992). Meaning, once certificated as a public utility, there is a continuing rebuttable presumption that the public utility is technically and financially fit. *See id; see also Application of Blue Bird Coach Lines, Inc.*, 72 Pa.P.U.C. 262 (1990), 0090 WL 10556057 (Pa.P.U.C.). This presumption may be rebutted by the protestants. *See South Hills* at 1310.

Pennsylvania American believes an application that is filed by an acquiring public utility-applicant under Section 1102 that includes the attachments required under Section 1329(d)(1)(i)-(v) will be subject to the standards of review under Section 1103 as described *supra*. Neither the

plain language of Section 1329 of the Code nor the legislative history for Act 12 indicates that the General Assembly intended to apply a new or different standard of review to such applications.

However, unlike the presumption of fitness for acquiring public utility-applicant, since it is already a certificated public utility, the entity-applicant must prove in its Section 1102 application by a preponderance of the evidence that it is technically, financially and legally fit to own and operate a water and wastewater system.¹¹

When considering the fitness of private investors seeking to obtain a certificate of public convenience to become a public utility, the Commission has stated: “[g]iven the recent trend wherein equity buyers have been entering into the regulated water industry, we must closely scrutinize investors with little or no public utility managerial experience, as there could be detrimental impacts upon the quality of service provided to ratepayers in both the short and long term.” *Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania and Utilities, Inc. – Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket No. A-210072F0003 *et al.* (Order entered Mar. 31, 2006), pp. 1-2.

The Commission established ten factors to be examined in order to determine whether equity fund ownership of a regulated public utility is in the public interest:

1. The capital to be allocated to ongoing operating and maintenance expenses;
2. Corporate governance / Sarbanes Oxley compliance;
3. The expected term of ownership;

¹¹ As noted by the Commission, such applications must adhere to Section 3.501 of the Commission’s regulations, at 52 Pa. Code § 3.501.

4. The buyer's experience as an owner and operator of water and wastewater utilities;
5. The community presence of the buyer;
6. The complex nature and objectives of the various affiliated relationships involved;
7. The fees paid to and service performed by affiliates;
8. The use of leverage to eliminate or maximize income tax liabilities;
9. The transparency on corporate structure issues; and,
10. Entity creditworthiness.

Id. (Orders entered Mar. 31, 2006 & Oct. 2, 2006).

Pennsylvania American believes an application that is filed by an entity-applicant under Section 1102 which includes the attachments required under Section 1329(d)(1)(i)-(v) will also be subject to the standard of review under Section 1103 and *Penn Estates* as described *supra*. Neither the plain language of Section 1329 of the Code nor the legislative history for Act 12 indicates that the General Assembly intended to apply a new or different standard of review to such applications. Furthermore, Pennsylvania American recommends that the Commission develop a separate Application Filing Checklist that applies to applications filed by an "entity" under Sections 1102 and 1329(d)(1) of the Code that incorporate the items discussed in *Penn Estates*.

H. Statutory Requirements

Finally, on pages 6, 7 and 8 of the Tentative Implementation Order, the Commission made reference to certain statutory provisions as providing "guidelines." Specifically, page 6 of the Tentative Implementation Order stated: "*Section 1329(b) provides guidelines for the selection and fees to be paid to the aforementioned UVEs.*" Page 7 of the Tentative Implementation Order stated that: "*Section 1329(c) provides guidelines regarding the rate base of the selling utility and the acquiring utility/entity for ratemaking purposes.*" Page 8 of the

Tentative Implementation Order stated: “*Section 1329(d) provides guidelines on acquisitions by public utilities as well as guidelines on the critical attachment to the Section 1102 application.*”

Pennsylvania American recommends that the Commission clarify in the final implementation order the requirements of the statute and remove language that suggests that such statutory requirements are merely “guidelines.”

IV. CONCLUSION

Pennsylvania-American Water Company commends the Commission for issuing provisional procedures and guidelines for the near term and appreciates the opportunity to provide comments on such procedures and guidelines for the Commission’s consideration in the final implementation order. For the reasons explained above, Pennsylvania-American Water Company generally supports the proposals in the Tentative Implementation Order but respectfully requests that the Pennsylvania Public Utility Commission adopt the proposals in its final implementation order consistent with these comments.

Respectfully submitted,



Melanie J. El Atieh, Esquire (PA ID # 209323)
Director, Corporate Counsel – Mid-Atlantic Division
American Water Works Service Company, Inc.
800 West Hersheypark Drive
Hershey, PA 17033
Telephone: (717) 531-3362
Facsimile: (717) 531-3399
Email: melanie.elatieh@amwater.com

Susan Simms Marsh, Esquire (PA ID # 44689)
Deputy General Counsel
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Telephone: (717) 531-3208
Facsimile: (717) 531-3399
E-mail: susan.marsh@amwater.com

Counsel for Pennsylvania-American Water Company

Dated: August 10, 2016

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of

Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

- | | |
|--|---------------------------|
| 7. State the fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation justifying the subject fee amounts. | No Yes Page No. _____ |
| 8. Provide a verification statement that the utility valuation expert has no affiliation with the buyer or seller as specified in 66 Pa. C.S. § 1329. | No Yes Page No. _____ |
| 9. Provide a verification statement that the appraisals performed by the utility valuation experts determined fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. | No Yes Page No. _____ |
| 7. 10. State the ratemaking rate base as required in 66 Pa. C.S. § 1329(c)(2) and specify whether it is based on either the fair market value determined by the valuation experts or the asset purchase price. | No Yes Page No. _____ |
| 8. 11. Quantify the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base shown. | No Yes Page No. _____ |
| 9. 12. Provide a proposed tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. | No Yes Page No. _____ |
| C. 13. Provide direct testimony for the application Documents Recommended Per 66 Pa. C.S. § 1329 | No Yes Page No. _____ |
| 10. 14. Plant in Service. a. State the original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations. Provide a verification statement that one utility valuation expert was selected by the acquiring public utility and the other utility valuation expert was selected by the selling utility, and that the appraisals performed by the utility valuation experts determined fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. | No Yes Page No. _____ |
| 11. State the fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation supporting fee amounts exceeding the fee | No Yes Page No. _____ |

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

limitation set forth in Section 1329(b)(3).

12. Provide a verification statement that the utility valuation expert meets the affiliation requirements as specified in 66 Pa. C.S. § 1329(b)(2)(i)-(ii). No Yes Page No. _____
13. Provide a copy of the licensed engineer's assessment as specified in 66 Pa. C.S. § 1329(a)(4). No Yes Page No. _____

D. Documents Recommended Per 66 Pa. C.S. § 1102(a).

14. Plant in Service.

- a. [Intentionally blank]
- b. State the DEP-permitted productive or treatment capacity of sources or treatment facility and the pipe-
~~sizes and~~ material used for construction for all transmission and distribution or collection facilities. No Yes Page No. _____
- c. ~~State the elevations of major facilities and service areas.~~ [intentionally blank] No Yes Page No. _____
- d. State the approximate time schedule for installation of the various component facilities, as applicable. No Yes Page No. _____
- e. State the tentative journal entries for booking the acquisition. No Yes Page No. _____
15. Map of Service Area. Provide a scalable map or plan of suitable scale highlighting the boundaries of the proposed service area, that includes:
- a. The extent of the proposed service area with any existing adjoining service area identified. No Yes Page No. _____
- b. A north arrow depicting map orientation. No Yes Page No. _____
- c. A graphic scale. No Yes Page No. _____
- d. A written metes and bounds description of the boundaries for the service territory utilizing bearing angles and distances. No Yes Page No. _____
- e. Size of the service territory area in terms of acres or square miles. No Yes Page No. _____

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

- f. Identification and depiction of all municipal boundaries relative to the service area. No Yes Page No. _____
- g. Identification and depiction of all private and public roads relative to the service area. No Yes Page No. _____
- h. Depiction of the location or route of the proposed waterworks or wastewater collection, treatment or disposal facilities. No Yes Page No. _____
16. Customers.
- a. State the utility's actual number of customers by class and quantify the related consumption or gallons treated in the current calendar year ~~and future number of connections anticipated for the next 10 years.~~ No Yes Page No. _____
- b. Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands. No Yes Page No. _____
- c. For **water** system acquisitions, quantify the number of public and private fire hydrants. No Yes Page No. _____
17. Rates.
- a. State the current rates of the selling entity. No Yes Page No. _____
- b. Provide a copy of the selling entity's current rules and regulations for service. No Yes Page No. _____
- c. Provide a proposed tariff or tariff supplement showing the rates, proposed rules, and conditions of service. No Yes Page No. _____
- d. Provide a copy of the sample notification to be sent by the acquiring utility to affected customers following the closing of the acquisition describing the ~~filing and the proposed rates~~ change of ownership. No Yes Page No. _____
18. Cost of Service, if a Rate Stabilization Plan is submitted.
- a. Provide a copy of the seller's audited financial statement for the previous two years. No Yes Page No. _____
- b. Provide a copy of the seller's adopted budget from the previous two years. No Yes Page No. _____

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

- c. If the seller is a municipal authority, provide a copy of the most recent annual report filed with the Commonwealth's Department of Community and Economic Development. No Yes Page No. _____
- d. Provide calculations quantifying the projected revenues and expenses for the acquisition. No Yes Page No. _____
- e. State whether there are any outstanding loans on the utility plant and identify the nature, terms, and payment history. No Yes Page No. _____
19. Proof of Compliance. Provide proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:
- a. For **water** system acquisitions, provide copies of the public water supply/water quality management permits for the utility plant. No Yes Page No. _____
- b. For **wastewater** system acquisitions, provide copies of the National Pollution Discharge Elimination System (NPDES) permits for the utility plant. No Yes Page No. _____
- c. For **wastewater** system acquisitions, provide a copy of the Chapter 94 Municipal Wasteload Management Report that was most recently submitted to DEP. No Yes Page No. _____
- d. Valid certified operators' certificates appropriate to the facilities being operated. No Yes Page No. _____
- e. Provide documentation evidencing a 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service. No Yes Page No. _____
- f. Provide documentation evidencing a 5-year compliance history with DEP of other utilities owned or operated, or both, by the buyer, including affiliates, and their officers and parent corporations with regard to the provision of utility service. No Yes Page No. _____
- g. Provide statement clarifying whether the acquired plant will be physically interconnected to the buyer's system or be operated as a standalone system. No Yes Page No. _____
- h. Provide a statement that explains how the acquisition No Yes Page No. _____

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

will fit into the current operations of the buyer.

- i. Provide a statement that identifies the staff, district or division of the buyer that will operate and manage the acquisition. No Yes Page No. _____
- j. Provide a statement quantifying the distance in miles the acquisition is from the buyer's existing system or facilities. No Yes Page No. _____
- k. Provide a statement that identifies all planned physical, operational and managerial changes of the buyer that will occur after closing and state the timeframe and cost for each. No Yes Page No. _____
20. Affected Persons. State the identity of all public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adjacent to the municipality(ies), in which the applicant seeks to provide service that abuts ~~or is situated within one mile of~~ the applicant's proposed facilities. No Yes Page No. _____
21. Other requirements. ~~Demonstrate compliance with the following:~~
- a. For **wastewater** system acquisitions, ~~demonstrate compliance with~~ provide a verification statement that requested service territory complies with the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities (including the extent of the requested service territory), ~~or if not, explain why not.~~ No Yes Page No. _____
- b. For **wastewater** system acquisitions, provide a copy of the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities. No Yes Page No. _____
- c. For **wastewater** system acquisitions, state the method of water service being provided in the requested territory (i.e., public water or private wells) and identify the name of water utility, if applicable. No Yes Page No. _____
- d. For **water** system acquisitions, state the method of No Yes Page No. _____

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

wastewater service being provided in the requested territory (i.e., public wastewater or private on-lot) and identify the name of wastewater utility, if applicable.

- e. Provide a copy of the affected municipality and county's comprehensive plans or provide ~~evidence~~ evidence verification statement that the application complies with the subject plans, or if not, explain why not. No Yes Page No. _____

22. Verification.

- a. For **water** system acquisitions, provide a verification that the water sources and customers are metered in accordance with 52 Pa. Code § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission. No Yes Page No. _____
- b. Include a statement that there is no affiliation between the buyer and seller. No Yes Page No. _____
- c. Include a statement that the agreement was conducted at arm's length. No Yes Page No. _____
- d. Include a statement explaining how the customers will benefit from the ownership. No Yes Page No. _____

23. Asset Purchase Agreement (APA).

- a. Provide a copy of the APA provided that is signed by all parties. No Yes Page No. _____
- ~~b. APA clearly states the purchase price and terms. No Yes Page No. _____~~
- ~~c. APA clearly states whether all assets or only a portion of the assets are to be purchased (e.g., water treatment and distribution or wastewater collection and treatment). No Yes Page No. _____~~
- ~~d. APA adequately describes the assets to be acquired. No Yes Page No. _____~~
- ~~e. APA adequately describes the assets to be excluded. No Yes Page No. _____~~
- ~~f. APA contains a copy of all agreements to be assumed by the buyer as part of the acquisition. No Yes Page No. _____~~

Appendix A-1 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. ~~§ 1329~~ §§ 1102, 1329 Application Filing Checklist –
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

*All information disclosed within this application is considered public information unless specifically labeled confidential. Applicants are responsible for disclosing to the Secretary's Bureau that which is privileged or confidential information and not otherwise available to the public. **Submit one copy of all confidential information, on documents stamped CONFIDENTIAL at the top in clear and conspicuous letters, in a separate envelope (but still attached to the application) to the Secretary's Office along with the Application.***

If you e-file your application, separately mail in any confidential information specifically identifying that you have e-filed the application. Be sure to specify the Applicant's name, and provide the e-filing confirmation page.

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102,1329 Application Filing Checklist
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

Circle No or Yes. If yes, identify the application's page number containing the item.

A. Notice of Application/Verification/Direct Testimony

- | | | | |
|--|----|-----|--|
| 1. Transmittal letter with caption and statement that filing is pursuant to 66 Pa. C.S. § 1102 (a), 1329(d)(1). | No | Yes | |
| 2. Verification form that is signed by an officer of the company, dated, and accurately references the case. | No | Yes | |
| 3. Certificate of Service indicating that a complete copy of the application with exhibits was served by registered or certified mail, return receipt requested, upon the following: | | | |
| a. each city, borough, town, township, county and related planning office which is included whole or in part in the proposed service area; | No | Yes | |
| b. a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts the service area proposed in the application; | No | Yes | |
| c. the statutory advocates, Bureau of I&E, Bureau of TUS, Office of ALJ, and | No | Yes | |
| d. the Department of Environmental Protection's central office and applicable regional office(s). | No | Yes | |
| 4. Provide direct testimony for the application. | No | Yes | |

B. Documents Required Per 66 Pa. C.S. § 1329(d)(1)

- | | | | |
|--|----|-----|----------------|
| 5. Provide copies of two appraisals performed by separate utility valuation experts establishing the system's fair market value. | No | Yes | Page No. _____ |
| 6. State the purchase price of the selling utility as agreed to by the acquiring public utility and selling utility. | No | Yes | Page No. _____ |

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102, 1329 Application Filing Checklist
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

7. State the ratemaking rate base as required in 66 Pa. C.S. § 1329(c)(2) and specify whether it is based on either the fair market value determined by the valuation experts or the asset purchase price. No Yes Page No. _____
8. Quantify the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base. No Yes Page No. _____
9. Provide a proposed tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. No Yes Page No. _____

C. Documents Recommended Per 66 Pa. C.S. § 1329

10. Provide a verification statement that one utility valuation expert was selected by the acquiring public utility and the other utility valuation expert was selected by the selling utility, and that the appraisals performed by the utility valuation experts determined fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. No Yes Page No. _____
11. State the fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation supporting fee amounts exceeding the fee limitation set forth in Section 1329(b)(3). No Yes Page No. _____
12. Provide a verification statement that the utility valuation expert meets the affiliation requirements as specified in 66 Pa. C.S. § 1329(b)(2)(i)-(ii). No Yes Page No. _____
13. Provide a copy of the licensed engineer's assessment as specified in 66 Pa. C.S. § 1329(a)(4). No Yes Page No. _____

D. Documents Recommended Per 66 Pa. C.S. § 1102(a)

14. Plant in Service.
a. [Intentionally blank]

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102,1329 Application Filing Checklist
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

- b. State the DEP-permitted productive or treatment capacity of sources or treatment facility and the pipe material used for construction for all transmission and distribution or collection facilities. No Yes Page No. _____
- c. [intentionally blank]
- d. State the approximate time schedule for installation of the various component facilities, as applicable. No Yes Page No. _____
- e. State the tentative journal entries for booking the acquisition. No Yes Page No. _____
- 15. Map of Service Area. Provide a scalable map or plan of suitable scale highlighting the boundaries of the proposed service area, that includes:
 - a. The extent of the proposed service area with any existing adjoining service area identified. No Yes Page No. _____
 - b. A north arrow depicting map orientation. No Yes Page No. _____
 - c. A graphic scale. No Yes Page No. _____
 - d. A written metes and bounds description of the boundaries for the service territory utilizing bearing angles and distances. No Yes Page No. _____
 - e. Size of the service territory area in terms of acres or square miles. No Yes Page No. _____
 - f. Identification and depiction of all municipal boundaries relative to the service area. No Yes Page No. _____
 - g. Identification and depiction of all private and public roads relative to the service area. No Yes Page No. _____
 - h. Depiction of the location or route of the proposed waterworks or wastewater collection, treatment or disposal facilities. No Yes Page No. _____
- 16. Customers.
 - a. State the utility's actual number of customers by class and quantify the related consumption or gallons treated in the current calendar year. No Yes Page No. _____

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102,1329 Application Filing Checklist
for Acquiring Public Utilities of

Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

- b. Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands. No Yes Page No. _____
- c. For **water** system acquisitions, quantify the number of public and private fire hydrants. No Yes Page No. _____
- 17. Rates.
 - a. State the current rates of the selling entity. No Yes Page No. _____
 - b. Provide a copy of the selling entity's current rules and regulations for service. No Yes Page No. _____
 - c. Provide a proposed tariff or tariff supplement showing the rates, proposed rules, and conditions of service. No Yes Page No. _____
 - d. Provide a copy of the sample notification to be sent by the acquiring utility to affected customers following the closing of the acquisition describing the change of ownership. No Yes Page No. _____
- 18. Cost of Service, if a Rate Stabilization Plan is submitted.
 - a. Provide a copy of the seller's audited financial statement for the previous two years. No Yes Page No. _____
 - b. Provide a copy of the seller's adopted budget from the previous two years. No Yes Page No. _____
 - c. If the seller is a municipal authority, provide a copy of the most recent annual report filed with the Commonwealth's Department of Community and Economic Development. No Yes Page No. _____
 - d. Provide calculations quantifying the projected revenues and expenses for the acquisition. No Yes Page No. _____
 - e. State whether there are any outstanding loans on the utility plant and identify the nature, terms, and payment history. No Yes Page No. _____

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102,1329 Application Filing Checklist
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

19. Proof of Compliance. Provide proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:
- a. For **water** system acquisitions, provide copies of the public water supply/water quality management permits for the utility plant. No Yes Page No. _____
 - b. For **wastewater** system acquisitions, provide copies of the National Pollution Discharge Elimination System (NPDES) permits for the utility plant. No Yes Page No. _____
 - c. For **wastewater** system acquisitions, provide a copy of the Chapter 94 Municipal Wasteload Management Report that was most recently submitted to DEP. No Yes Page No. _____
 - d. Valid certified operators' certificates appropriate to the facilities being operated. No Yes Page No. _____
 - e. Provide documentation evidencing a 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service. No Yes Page No. _____
 - f. Provide documentation evidencing a 5-year compliance history with DEP of other utilities owned or operated, or both, by the buyer, including affiliates, and their officers and parent corporations with regard to the provision of utility service. No Yes Page No. _____
 - g. Provide statement clarifying whether the acquired plant will be physically interconnected to the buyer's system or be operated as a standalone system. No Yes Page No. _____
 - h. Provide a statement that explains how the acquisition will fit into the current operations of the buyer. No Yes Page No. _____
 - i. Provide a statement that identifies the staff, district or division of the buyer that will operate and manage the acquisition. No Yes Page No. _____
 - j. Provide a statement quantifying the distance in miles the acquisition is from the buyer's existing system or facilities. No Yes Page No. _____

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102,1329 Application Filing Checklist
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

- k. Provide a statement that identifies all planned physical, operational and managerial changes of the buyer that will occur after closing and state the timeframe and cost for each. No Yes Page No. _____
20. Affected Persons. State the identity of all public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adjacent to the municipality(ies), in which the applicant seeks to provide service that abuts the applicant's proposed facilities. No Yes Page No. _____
21. Other requirements.
- a. For **wastewater** system acquisitions, provide a verification statement that requested service territory complies with the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities (including the extent of the requested service territory), or if not, explain why not. No Yes Page No. _____
- b. For **wastewater** system acquisitions, provide a copy of the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities. No Yes Page No. _____
- c. For **wastewater** system acquisitions, state the method of water service being provided in the requested territory (i.e., public water or private wells) and identify the name of water utility, if applicable. No Yes Page No. _____
- d. For **water** system acquisitions, state the method of wastewater service being provided in the requested territory (i.e., public wastewater or private on-lot) and identify the name of wastewater utility, if applicable. No Yes Page No. _____
- e. Provide a copy of the affected municipality and county's comprehensive plans or provide a verification statement that the application complies with the subject plans, or if not, explain why not. No Yes Page No. _____

Appendix A-2 to Pennsylvania American's Comments

Pennsylvania Public Utility Commission
66 Pa. C.S. §§ 1102,1329 Application Filing Checklist
for Acquiring Public Utilities of
Water/Wastewater Systems Owned by Municipalities or Municipal Authorities

22. Verification.

- | | | |
|--|-----------|----------------|
| a. For water system acquisitions, provide a verification that the water sources and customers are metered in accordance with 52 Pa. Code § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission. | No Yes | Page No. _____ |
| b. Include a statement that there is no affiliation between the buyer and seller. | No Yes | Page No. _____ |
| c. Include a statement that the agreement was conducted at arm's length. | No Yes | Page No. _____ |
| d. Include a statement explaining how the customers will benefit from the ownership. | No Yes | Page No. _____ |

23. Asset Purchase Agreement (APA).

- | | | |
|--|-----------|----------------|
| a. Provide a copy of the APA provided that is signed by all parties. | No Yes | Page No. _____ |
|--|-----------|----------------|

*All information disclosed within this application is considered public information unless specifically labeled confidential. Applicants are responsible for disclosing to the Secretary's Bureau that which is privileged or confidential information and not otherwise available to the public. **Submit one copy of all confidential information, on documents stamped CONFIDENTIAL at the top in clear and conspicuous letters, in a separate envelope (but still attached to the application) to the Secretary's Office along with the Application.***

If you e-file your application, separately mail in any confidential information specifically identifying that you have e-filed the application. Be sure to specify the Applicant's name, and provide the e-filing confirmation page.

Appendix B

to PAWC's Comments, Docket No. M-2016-2543193

**PAWC's Recommended Revisions to
Commission's Proposed Six-Month Timeline for
Applications Filed by
Acquiring Public Utilities
Pursuant to Sections 1102 and 1329**

Application & Direct Testimony/Supporting Documentation Filed	Model Timeline
<u>Section 1102 Application is Filed by Acquiring Public Utility with Attachments Required under Section 1329(d)(1)</u>	<u>Filing Date/ Commencement Date (Day 1) of Six-Month Deadline</u>
<u>Secretarial Letter issued Acknowledging Receipt of Application and Assigning Docket Number; Secretary's Bureau assigns Application to Bureau of Technical Utility Services ("TUS") and Office of Administrative Law Judge ("ALJ")</u>	<u>No Later than Day 3</u>
<u>Applicant files Motion for Protective Order under Assigned Docket Number</u>	<u>No Later than Day 5</u>
<u>Application Accepted as Complete Acceptance Notice from TUS Staff to Acquiring Public Utility and presiding ALJ that Application is Accepted as Complete; or Rejection Notice from TUS Staff to Acquiring Public Utility and presiding ALJ that Application Clearly Denoting Missing Items from Section 1329(d)(1)</u>	<u>Filing Date No Later than Day 5</u>
<u>Application and Prehearing Conference Notice Sent to Pennsylvania Bulletin</u>	<u>No Later than Day 5</u>
<u>Proof of Newspaper Publication and Copy of Bill Insert Notification Protest are due no later than Day 32 (published once a week for two consecutive weeks in a newspaper having a general circulation in the area involved)</u>	<u>No Later than Day 720</u>
<u>Pennsylvania Bulletin Publication</u>	<u>Day 16</u>
<u>Proof of Newspaper Publication due</u>	<u>Day 22</u>

Protests Due	Day 32
Timeline if Protest(s) Filed	
<u>Application un-assigned to Bureau of TUS</u>	Day 33
Prehearing Conference	Day 34
Direct Testimony of Other parties	Day 36
Rebuttal Testimony	Day 41 46
Surrebuttal Testimony	Day 44 54
Evidentiary Hearings <u>with Oral Rejoinder</u>	Days 47 and 48 56-58
Receipt of Transcript	Day 49 59-61
Main Briefs and Reply Briefs	Day 50-79 60-90
Close of record	Day 79 90
ALJ Recommended Decision	Day 116 124
Exceptions	Day 126 134
Replies to Exceptions	Day 136 141
Order Preparation, Commission consideration & action	Days 137 142-166
Preparation and entry of Final Commission Order	Days 167-181
End of six months deadline	Day 182
Timeline if No Protest(s) Filed	
<u>Application un-assigned to Office of ALJ</u>	Day 33
<u>TUS Staff Issues First Set of Data Requests</u>	No Later than Day 36
<u>TUS Review of Application and all sets of Data Requests to be completed</u>	Day 60
<u>Order Preparation, Commission consideration & action</u>	Days 61 - 85

Comment [AWW1]: Increase by 5 (from 5 to 10 days for rebuttal)

Comment [AWW2]: Increase by 5 (from 3 to 8 days for surrebuttal)

Comment [AWW3]: Need 3 days for receipt of transcript, unless court reporter can agree to shorter turn-around time

Comment [AWW4]: Maintain approx. 30 days for briefs (20 days for Main Brief; 10 days for Reply Brief)

Comment [AWW5]: Decrease from 37 days to 34 days for ALJ RD

Comment [AWW6]: Keep 10 days for exceptions

Comment [AWW7]: Decrease from 10 to 7 days for reply exceptions

Comment [AWW8]: Decrease from 29 to 24 days for staff preparation of Commission Order

Preparation and entry of Final Commission Order	Days 86 – 100
---	---------------