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**VIA E-FILE**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
Harrisburg, PA 17120

**Re: Implementation of Section 1329 of the Public Utility Code; M-2016-2543193  
Tentative Supplemental Implementation Order**

Dear Secretary Chiavetta:

SUEZ Water Pennsylvania Inc. ("SWPA" or the "Company") appreciates the chance to comment on the Section 1329 Tentative Supplemental Implementation Order, entered by the Pennsylvania Public Utility Commission ("Commission") on September 20, 2018 ("Tentative Order"). First, the Company would like to say that it supports Section 1329's core objectives of providing a progressive and innovative framework for private water or wastewater companies to recover its appropriate investment and costs when making an acquisition of a municipal water or wastewater system. SWPA also appreciates the Commission's efforts to create more certainty in the process, improve the quality of valuations, ensure that the adjudication process is both fair and efficient, and ultimately reduce litigation costs and appeals of Commission final determinations.

SWPA has first-hand experience with Section 1329, as it has both bid on multiple systems utilizing Section 1329 and has been successful in the only Section 1329 bid award that involves both water and wastewater. *See Application of SUEZ Water Pennsylvania Inc. for Approval of Acquisition of Mahoning Township Water and Wastewater Systems*, Docket Nos. A-2018-3003517, A-2018-3003519 (pending approval of settlement). As an active participant in system sale solicitations and the Section 1329 process, SWPA respectfully requests that it be included in any future collaboratives, workshops, or working groups with Commission Staff and other market participants related to Section 1329.

Below are SWPA's comments to the Tentative Order based on its experience to date:

**APPLICATION FILING CHECKLIST**

- SWPA is in support of clarifying the checklist included in Appendix A to streamline the process. However, the amount of information that will be required under the checklist is unfortunately



independent of the size of the purchased system. SWPA recommends that the Commission create a modified application filing checklist based on the size of the purchased system, *e.g.*, one for systems with less than 1,000 customers or a purchase price of less than \$10 million. It is unreasonable to require the same extensive information for a small acquisition that is required for a large acquisition. The costs of complying with the full checklist may outweigh any potential rate impact associated with the acquisition. The Commission should develop a “short form” checklist for a small acquisition – as it has previously done with regard to a “short form” rate filing involving a requested annual revenue requirement increase of \$1 million or less.

- SWPA does not believe acquisitions under Section 1329 that result in an investment per customer in excess of double and triple the purchasing entity’s existing investment per customer is sustainable (*e.g.*, where the acquisition results in an investment per customer of \$10,000 or more per customer). SWPA recommends that, if the average of the two independent valuations are within ten percent of each other and the purchase price is within ten percent of the purchasing company’s investment per customer, the modified application filing checklist mentioned above for smaller-sized systems should be used.
- SWPA believes that a modified and shortened filing checklist for smaller acquisitions will expedite the approval process which, in turn, will help ensure that there are adequate human resources needed to complete the entire acquisition process (both at the Commission and at the companies). The Tentative Order, if adopted as final, would materially increase the administrative burden through additional checklist requirements and standard data requests. While to date there have only been a handful of purchases utilizing Section 1329, it is questionable -- due to the current process -- that meeting the statutory six-month deadline will be sustainable if there is a larger amount of these acquisitions in any given year and an expanded filing checklist. The Commission should endeavor to handle smaller acquisitions through an expedited process.
- SWPA was required by Commission Staff to file separate water and wastewater applications in its recent acquisition of Mahoning Township’s water and wastewater systems – even though both systems were acquired in the same transaction. The separate applications were then immediately consolidated into the same proceeding for hearing before the Office of Administrative Law Judge (“OALJ”). SWPA respectfully submits that a single application filing should suffice in such circumstances -- understating that there would have to be the appropriate allocation of the purchase price and the valuations between the water and wastewater systems. Again, this recommendation would save costs and time for the Commission and the parties involved.
- The Commission’s Bureau of Technical Utility Services (“TUS”) issued application deficiency letters for both SWPA’s water application and wastewater application in the Mahoning acquisition. Once the applications were accepted for filing following SWPA’s responses to the deficiency letters, TUS then issued separate data requests for the water application and the wastewater application (many of which were duplicative). The data requests were extensive and detailed, and were issued immediately prior to protests being filed by the Office of Consumer Advocate and the referral of the matters to OALJ for hearing. Despite the reassignment of the applications from TUS to OALJ, TUS took



the position that SWPA was still required to answer the two (largely duplicative) sets of data requests. Many of the data requests were duplicative of discovery requests that SWPA would later receive from the public advocates. SWPA respectfully requests that the Commission clarify that, once a protest is filed, the applicant no longer has an obligation to answer the TUS data requests – as the case is no longer within the responsibility of TUS. The preparation of responses to the TUS data requests is time consuming and expensive, and detracts the applicant from the litigation of the proceeding – which is on an expedited schedule (including a five-day discovery turn-around).

#### **COST OF SERVICE**

- SWPA believes that the rates of the acquired system should represent full cost of service in the shortest possible time frame and that cross-subsidization of rates should be discouraged. The ability to spread the reduced rates across a large existing customer base creates an uneven playing field and may not necessarily result in the best-qualified utility acquiring the system from the perspectives of technical expertise, consolidation, and regionalization. Prompt movement toward true cost of service may also minimize or eliminate the need for the purchasing entity to notify all of its existing customers about the impact on their rates. There should be a heightened burden of proof upon an applicant that is proposing cost subsidization by existing customers over an extended period of time.

#### **PUBLIC VALUE**

- SWPA believes that more value and weight should be given to whether the transaction is in the public's best interest and not solely on the acquisition price. Consideration should include regionalization opportunities, rate impact, technical expertise, etc. SWPA recommends that the Commission consider a process that has the evaluations completed and approved by the Commission (following input by interested parties) prior to the selling entity issuing a request for proposal ("RFP"). This would require the focus of the purchase to be about service and public good while still providing the opportunity of a competitive bid and the selling entity obtaining fair market price for its assets. This process would also provide an opportunity to arrive at more streamline approval process -- again saving both time and costs for all involved. SWPA recognizes that this modified process may require certain legislative changes and encourages the Commission to consider pursuing such changes in order to make Section 1329 more practical and effective.

Best regards,

A handwritten signature in blue ink that reads "John D. Hollenbach".

John D. Hollenbach  
Vice President