

January 25, 2019

VIA E-FILE

**David P. Zambito**

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

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

**PENNSYLVANIA-AMERICAN WATER COMPANY'S PETITION FOR LEAVE TO FILE  
SUPPLEMENTAL COMMENTS ON THE TENTATIVE SUPPLEMENTAL  
IMPLEMENTATION ORDER**

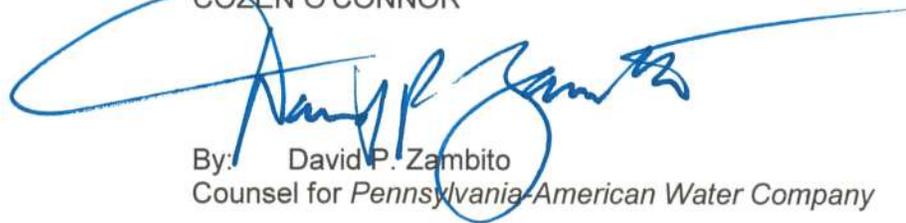
Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Pennsylvania-American Water Company's Petition for Leave to File Supplemental Comments on the Tentative Supplemental Implementation Order in the above-referenced proceeding. As required by Ordering Paragraph No. 7, of the Tentative Supplemental Implementation Order, this Petition is being provided in Word-compatible format to Law Bureau. Copies have been served as shown on the attached certificate of service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR



By: David P. Zambito  
Counsel for *Pennsylvania-American Water Company*

DPZ:kmg  
Enclosure

cc: Andrew L. Swope, Esq.  
Shaun Sparks, Esq., Law Bureau (Word-compatible version via e-mail)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of 1329 of the Public Utility : Docket No. M-2016-2543193  
Code :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Petition for Leave to File Supplemental Comments on the Tentative Supplemental Implementation Order** on behalf of Pennsylvania-American Water Company, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA FIRST CLASS MAIL**

Pennsylvania Rural Water Association  
138 West Bishop Street  
Bellefonte, PA 16823

Pennsylvania State Association of Township  
Supervisors  
4855 Woodlands Drive  
Enola, PA 17025

Pennsylvania State Association of Boroughs  
2941 North Front Street  
Harrisburg, PA 17110

John R. Evans  
Office of Small Business Advocate  
300 North Second Street  
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David R. Kaufman, Chairman  
NAWC PA Chapter  
c/o Pennsylvania American Water Company  
800 West Hersheypark Drive  
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Francis J. Catania, Esq.  
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**Solicitor for *Chester Water Authority***

Kevin M. Fox, P.E.  
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Herbert, Rowland & Grubic, Inc.  
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Harrisburg, PA 17111

**Representative for *Herbert, Rowland & Grubic, Inc.***

Erika L. McLain, Esq.  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
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**Counsel for *Bureau of Investigation & Enforcement***

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Jeffrey R. Hines, P.E.  
President and Chief Executive Officer  
The York Water Company  
130 East Market Street  
York, PA 17401  
**Representative of The York Water  
Company**



David P. Zambito, Esq.  
Counsel for Pennsylvania-American Water  
Company

Date: January 25, 2019

## VERIFICATION

I, Bernard J. Grundusky, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: January 25, 2019

  
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Bernard J. Grundusky  
Senior Director, Business Development  
Pennsylvania American Water Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PENNSYLVANIA-AMERICAN WATER COMPANY’S PETITION FOR  
LEAVE TO FILE SUPPLEMENTAL COMMENTS  
ON THE TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER**

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NOW COMES PENNSYLVANIA-AMERICAN WATER COMPANY (“PAWC”), pursuant to 52 Pa. Code § 5.41, to file this Petition (“Petition”) requesting that the Pennsylvania Public Utility Commission (“Commission”) grant it leave to file Supplemental Comments on the Tentative Supplemental Implementation Order (“TSIO”) entered in this matter on September 20, 2018. PAWC’s Supplemental Comments are attached hereto as **Appendix A**. In support thereof, PAWC avers as follows:

**I. INTRODUCTION**

One of the critical issues addressed in the TSIO, and the Comments and Reply Comments submitted in response thereto, is the notice to customers that is required by the decision of the Commonwealth Court of Pennsylvania in *McCloskey v. Pennsylvania Public Utility Commission*, 1624 C.D. 2017 (September 17, 2018) (“*McCloskey*”). Most if not all of the commenters discussed

this issue. Significantly, the commenters expressed different opinions on the approach that the Commission should adopt in response to this decision.<sup>1</sup>

In addition, this issue has caused at least two Section 1329 Applications to become stalled in the Commission. *See Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the Township of Exeter's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in portions of the Township of Exeter, and in portions of Alsace and Lower Alsace Townships, to one bulk service interconnection point with Alsace Township, and to four bulk service interconnection points with St. Lawrence Borough, Berks County, Pennsylvania, Docket No. A-2018-3004933 ("Exeter Application Proceeding")*; and *Application and related filings of Pennsylvania-American Water Company under Sections 507, 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 507, 1102(a), 1329, for approval of its acquisition of water system assets of the Steelton Borough Authority, related water service rights, fair market valuation ratemaking treatment, deferral of the post-acquisition improvement costs, and certain contracts with municipal corporations, Docket No. A-2019-3006880 ("Steelton Application Proceeding")*. On December 14, 2018, the Office of Consumer Advocate ("OCA") filed a Petition to Reject or Hold in Abeyance Acceptance of the Application in the *Exeter Application Proceeding*, arguing that the parties and the Commission need additional time to

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<sup>1</sup> Aqua Pennsylvania, Inc. filed a petition for allowance of appeal with the Supreme Court of Pennsylvania on November 8, 2018. 743 MAL 2018. The Supreme Court has not yet acted on the petition. Should the *McCloskey* decision be overturned or otherwise modified, PAWC respectfully suggests that the Commission should revisit any customer notice requirements that may be set forth in the Final Supplemental Implementation Order. Any such requirements should be clearly identified as "Interim."

resolve the issues regarding customer notice. On January 14, 2019, the OCA filed a Petition for Stay in the *Exeter Application Proceeding*, also on the ground that additional time is necessary for the Commission and the parties to resolve the issue of customer notice. PAWC filed answers to both filings expeditiously, but the Commission has not yet rendered a ruling on the OCA's filings.<sup>2</sup> PAWC anticipates that similar motions or petitions will be filed in the *Steelton Application Proceeding*.

Given the passage of time since the parties submitted reply comments, and experience gained with the two cases referenced above, the parties have had additional opportunities to study the *McCloskey* decision and develop ideas for the Commission's response to it. After further consideration, PAWC has developed the proposal described in the attached Supplemental Comments. Other parties also might have developed additional proposals in the period since Comments and Reply Comments were submitted to the Commission. They should be given an opportunity to submit those comments, and to respond to PAWC's proposal as a matter of due process.

## II. ARGUMENT

The Comments and Reply Comments submitted in response to the TSIO demonstrated that the parties have divergent views on how the Commission should respond to the *McCloskey* decision. Additionally, there are two pending Section 1329 Applications that have become stalled due to divergent views on the appropriate customer notice for such an application. The

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<sup>2</sup> In addition, on December 20, 2018, the PUC's Bureau of Investigation and Enforcement filed a Motion to Reject or Hold in Abeyance the Amended Application in the *Exeter Application Proceeding*, but that Motion did not raise the issue of customer notice. That Motion remains pending before the Commission.

Commission should resolve this important issue in a manner that will apply across-the-board, rather than deciding this issue on a case-by-case basis.

The public interest favors giving the parties an additional opportunity to submit comments on the critical issue of customer notice. An additional round of comments may result in new proposals for addressing this important issue. While it is doubtful that any proposal will achieve a unanimous agreement, another round of comments might help move the parties closer to achieving a consensus, reducing the likelihood that any Commission decision on this issue will be appealed, resulting in further delays for Section 1329 Applications.

### **III. RECOMMENDED PROCEDURE**

PAWC's Supplemental Comments are attached to this Petition as **Appendix A**. As demonstrated by the attached certificate of service, PAWC has served a copy of this Petition on every party that submitted comments and/or reply comments on the TSIO.

Under traditional Commission procedures, the Commission would wait 20 days for all parties to respond to PAWC's Petition. 52 Pa. Code § 5.61(a). It would then issue a decision on that Petition. If the Commission would grant that Petition, the Commission would need to afford all parties an opportunity to submit Supplemental Comments. All of this would result in an undue delay in the Commission's issuance of a Final Supplemental Implementation Order.

The Commission's regulations, however, give it the authority to modify the procedure to be used in a particular case. 52 Pa. Code §§ 1.2 and 5.61(a). PAWC respectfully requests that the Commission promptly grant the Petition and issue a Secretarial Letter inviting the other parties to this proceeding to submit replies to PAWC's Supplemental Comments within ten days of the issuance of the Secretarial Letter. The Commission will then review PAWC's Supplemental

Comments and the replies thereto, and be in a position to issue a Final Supplemental Implementation Order at its February 28, 2019 meeting. Commission action at the February 28, 2019 would help to alleviate the undue delay currently being experienced with regard to Section 1329 applications.

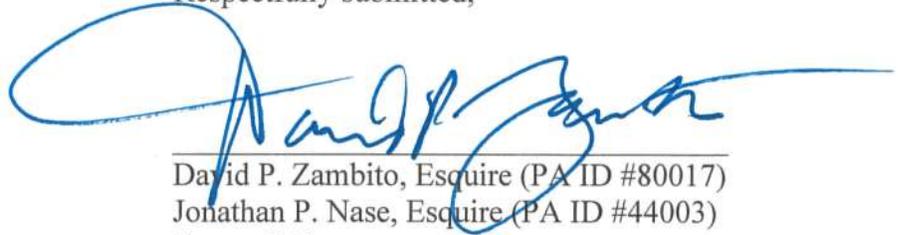
**V. REQUEST FOR RELIEF**

WHEREFORE, for the reasons stated above, Pennsylvania-American Water Company respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Grant this Petition for Leave to File Supplemental Comments on the Tentative Supplemental Implementation Order;
- (2) Issue a Secretarial Letter permitting parties who previously submitted comments and/or reply comments in this proceeding to submit replies to Pennsylvania-American Water Company's Supplemental Comments within 10 days of the issuance of the Secretarial Letter; and,

(3) Consider Pennsylvania-American Water Company's Supplemental Comments on the Tentative Supplemental Implementation Order, attached hereto as **Appendix A**, and any replies submitted pursuant to Ordering Paragraph No. 2, when issuing the Final Supplemental Implementation Order in this proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David P. Zambito", is written over a horizontal line.

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Jonathan P. Nase, Esquire (PA ID #44003)  
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Dated: January 25, 2019

## APPENDIX A

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PENNSYLVANIA-AMERICAN WATER COMPANY'S  
SUPPLEMENTAL COMMENTS ON THE  
TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER**

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NOW COMES PENNSYLVANIA-AMERICAN WATER COMPANY ("PAWC"), pursuant to the Tentative Supplemental Implementation Order ("TSIO") entered in this matter on September 20, 2018, to submit these Supplemental Comments for consideration by the Pennsylvania Public Utility Commission ("Commission").

**I. INTRODUCTION AND BACKGROUND**

PAWC is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. It has completed two acquisition proceedings pursuant to Section 1329, has submitted two additional Section 1329 Applications to the Commission, and expects to file more Section 1329 applications in the future.

PAWC appreciates the opportunity to provide its input to the Commission. In these Supplemental Comments, PAWC will offer a new proposal for the Commission's consideration in addressing the issue of notice to customers.

## II. NOTICE TO AFFECTED CUSTOMERS

The TSIO requires the application to include the notice sent to affected customers describing the filing and the anticipated effect on rates. TSIO p. 9. In addition, PAWC respectfully submits that the Commission should require the applicant to prepare a statement of reasons and potential bill impact (“Statement of Reasons and Potential Bill Impact”), which would be referenced in the customer notice. This approach would be similar to the approach used in general rate proceedings. 52 Pa Code § 53.52(a)(1) requires a public utility to prepare a statement of the reasons for each proposed change in the tariff, and the customer notice required by 52 Pa. Code §§ 53.45(b)(1)(i) and 53.45(b)(2) is required to include a reference to the company’s statement of reasons, together with a notice of how the customer can obtain a copy of that statement of reasons.

Like the notice, the Statement of Reasons and Potential Bill Impact (together with supporting workpapers) would be a checklist item, and the Bureau of Technical Utility Services (“TUS”) would before accepting the application for filing purposes. If TUS would find the Statement of Reasons and Potential Bill Impact deficient, the applicant would have an opportunity to revise that document and resubmit it – just as the applicant can revise any other document in the application that TUS finds deficient.

A pro forma version of the customer notice is attached as **Attachment A** to these Comments, and a *pro forma* version of the Statement of Reasons and Potential Bill Impact is attached as **Attachment B**.

Considering that the Commonwealth Court of Pennsylvania, in *McCloskey v. Pennsylvania Public Utility Commission*, 1624 C.D. 2017 (September 17, 2018) (“*McCloskey*”), ordered the Commission to require that notice be provided in accordance with 52 Pa. Code § 53.45, this

approach appears appropriate because it is modeled on that section.<sup>3</sup> The approach, however, recognizes that, while rate base for the acquired system is being set through the Section 1329 application proceeding, actual rates will not be set until a future base rate proceeding and such rates are unknowable at the application stage. In this regard, the inclusion of a specific rate increase percentage in the customer notice – as the OCA has advocated – would be factually misleading and serve only to confuse and agitate customers.

Under PAWC’s suggested approach, interested customers -- who desire additional information -- would be directed by the customer notice to the Statement of Reasons and Potential Bill Impact. The statement would be readily available upon contact to the company (as in a base rate case) and would provide a more accurate and thorough explanation of the range of potential rate impacts that could result from a future base rate proceeding. The approach would satisfy the notice requirement of *McCloskey*, ensure that interested customers are fairly apprised of the potential rate implications of the Section 1329 application, and allow Section 1329 applications to again move forward consistent with the intent of the General Assembly.

#### **IV. CONCLUSION**

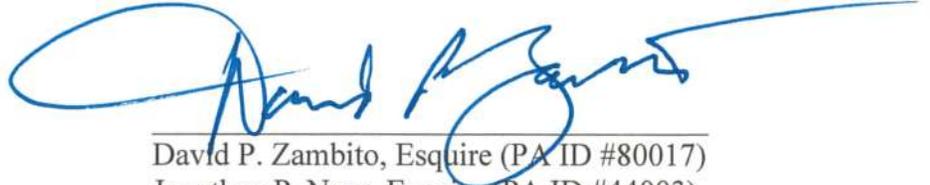
PAWC appreciates the opportunity to submit Supplemental Comments in response to the TSIO. PAWC agrees with the Commission that there is a need to address issues that have come to light during the years since Section 1329 was enacted. PAWC commends the Commission for

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<sup>3</sup> Aqua Pennsylvania, Inc. filed a petition for allowance of appeal with the Supreme Court of Pennsylvania on November 8, 2018. 743 MAL 2018. The Supreme Court has not yet acted on the petition. Should the *McCloskey* decision be overturned or otherwise modified, PAWC respectfully suggests that the Commission should revisit any customer notice requirements that may be set forth in the Final Supplemental Implementation Order. Any such requirements should be clearly identified as “Interim.”

its efforts to address these issues through a supplemental implementation order rather than attempting to address these issues through litigation on a case-by-case basis.

Respectfully submitted,



David P. Zambito, Esquire (PA ID #80017)  
Jonathan P. Nase, Esquire (PA ID #44003)  
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Dated: January 25, 2019

**ATTACHMENT A**

## PRO FORMA

### NOTICE OF PROPOSED ACQUISITION AND RATE BASE ADDITION

Dear Customer:

On [date], the Pennsylvania Public Utility Commission (PUC) conditionally accepted for filing the application of [utility] for approval to acquire the [municipality or authority] water/wastewater system assets. [Municipality or authority] serves approximately [number] customers in [county], Pa. [Utility's] application also requests that the PUC authorize an addition of up to \$ [ ] to [utility's] rate base pursuant to 66 Pa. C.S. § 1329. A utility's rate base is the value of property used by the utility to provide service to its customers and is one of several components used to establish a utility's customer rates. This acquisition will not immediately, but may in the future, affect your water or wastewater bill.

[Utility] is not requesting a rate increase as part of the acquisition. Your rates will not change until the conclusion of [utility's] next rate case where [utility] requests and receives PUC approval to increase its rates. At this time, it is unclear when [utility] will file its next rate case and what the impact of the [municipality or authority] acquisition may be on your rates. Upon request, the company will send you a Statement of Reasons and Potential Bill Impact, explaining the reasons for the acquisition and the potential impact upon your future bills.

#### ACTIONS YOU CAN TAKE

The PUC is the state agency that reviews proposed acquisitions and proposed rates. The PUC will issue a decision on the application on or around [date]. You can support or challenge [utility's] request by:

- 1) Sending a letter to the PUC. You can tell the PUC why you support or object to [utility's] acquisition of [municipality or authority's] water/wastewater system in your letter. This information can be helpful when the PUC investigates the application. Send your letter to the Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, PA 17105-3265.
- 2) Filing a protest or a petition to intervene. If you want to be a party to the case, you must file a protest or a petition to intervene. You then have an opportunity to take part in all the hearings about the proposed acquisition. You can receive copies of all materials distributed by the other parties. Protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before [date]. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on [utility's] counsel at [name and address].

The documents filed in support of the application are available for inspection and copying at the Office of the Secretary of the PUC between 8 a.m. and 4:30 p.m., Monday through Friday, on the PUC's website at [www.puc.pa.gov](http://www.puc.pa.gov) and at [utility's] offices at [address]. The PUC docket number is [ ]. For more information, you may contact [utility] at [toll-free phone number] or the PUC's Bureau of Consumer Services at 1-800-692-7380.

**ATTACHMENT B**

PRO FORMA

STATEMENT OF REASONS AND POTENTIAL BILL IMPACT

On [date], the Pennsylvania Public Utility Commission (PUC) conditionally accepted for filing the application of [utility] for approval to acquire the [municipality or authority] water/wastewater system assets. [Municipality or authority] serves approximately [number] customers in [county], Pa. [Utility's] application also requests that the PUC authorize an addition of up to \$ [ ] to [utility's] rate base pursuant to 66 Pa. C.S. § 1329.

A utility's rate base is the value of property used by the utility to provide service to its customers and is one of several components used to establish a utility's customer rates. It is one factor that the PUC considers when setting rates. The impact on rates from the additional rate base allowed in this proceeding will vary based on a number of factors, including but not limited to, gradualism in rate increases, revenue requirement allocation between rate classes, the extent to which water and wastewater revenue requirements are combined, whether a separate rate zone is established for the territory currently served by [municipality or authority], whether an acquired wastewater system is a sanitary-only system or a combined sewer overflow system, and whether the rate case settles for a lower revenue increase than requested.

Based on a preliminary analysis of the potential rate impacts, [utility] estimates that the rates of the average customer could increase. The amount of the increase will be determined in the [utility's] next base rate case, and will be dependent on how the Commission chooses to apportion the increase among the acquired and existing customers of the [utility]. The following chart illustrates examples of various potential customer impacts:

Scenario	Percentage Increase in Rates	
	Customer of [municipality or authority]	Existing Customer of [utility]
Increase allocated to entire customer base	XX%	XX%
50% allocated to existing customer base	XX%	XX%
100% allocated to acquired customer base	XX%	0%

[For wastewater acquisitions, additional scenarios would be presented by the utility related to a combined water/wastewater revenue requirement under Act 11 of 2012.]

It is [utility's] position that the proposed acquisition will affirmatively benefit the public in a substantial way. [Utility] believes the acquisition will promote the Commission's policy of consolidation and regionalization of water and wastewater systems. [Utility] also believes the increased number of customers will enable it to spread the cost of service over time, thereby mitigating the rate increases that might otherwise be necessary throughout its system.

[Additional reasons that the utility wishes to list.]

It is also the position of [municipality or authority] that the acquisition will affirmatively benefit the public in a substantial way. The benefits for [municipality or authority] and its current customers include receipt of the purchase price, which will be used for public purposes. In addition, [utility] has considerable expertise in owning and operating a water/wastewater system, and has access to substantial capital resources. [Additional reasons that the municipality or authority wishes to list].

The acquisition must be approved by the PUC. Under Pennsylvania law, the PUC is required to enter a decision by [date].