



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

February 7, 2019

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

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

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Supplemental Reply Comments** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 783-6170.

Sincerely,

Erika L. McLain

Prosecutor

Bureau of Investigation and Enforcement

PA Attorney I.D. No. 320526

ELM/jfm
Enclosure

cc: Bohdan Pankiw (via email only bpankiw@pa.gov)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Section 1329
of the Public Utility Code

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Docket No. M-2016-2543193

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Supplemental Reply Comments** on February 7, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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PA Attorney I.D. No. 320526

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SUPPLEMENTAL REPLY COMMENTS OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

I. INTRODUCTION

Governor Wolf signed Act 12 of 2016 into law on April 14, 2016 which amended Chapter 13 of the Pennsylvania Public Utility Code by adding Section 1329. Section 1329 became effective on June 13, 2016, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued a Tentative Implementation Order regarding Section 1329 on July 21, 2016 and a Final Implementation Order on October 27, 2016.

Recognizing a need to address issues that came to light in Section 1329 Proceedings the Commission issued a Tentative Supplemental Implementation Order (“TSIO”) on September 20, 2018. The Bureau of Investigation and Enforcement (“I&E”) filed Comments to the TSIO on November 2, 2018 and Reply Comments on November 19, 2018.

On January 25, 2019, Pennsylvania American Water Company (“PAWC”) filed Supplemental Comments on the Commission’s TSIO that offered its proposed language and process to provide customer notice. I&E now files these timely Reply Comments to PAWC’s proposal.

II. COMMENTS

PAWC, in its Supplemental Comments, focuses on the notice to affected customers of a Section 1329 application. In *McCloskey v. Pennsylvania Public Utility Commission* (“*McCloskey*”),¹ the Commonwealth Court ordered the Commission to require applicants to provide notice in accordance with 52 Pa. Code §53.45, which details notice given to customers for a general rate increase. I&E is concerned about PAWC’s proposals because its notice deviates from the clear, concise language articulated in Section 53.45 and because it places the burden of requesting rate impact information on its customers rather than initiated by the utility as required in Section 53.45.

A. PAWC’s Proposed Language

Section 53.45 provides specific wording to be used when notifying customers of the increase, including a percentage by which a customer could be impacted if the requested rate increase were to be approved by the Commission.² For example, Section 53.45 requires that the following notice be provided to residential customers.

To Our Customers:

(company) is filing a request with the Pennsylvania Public Utility Commission to increase your (type of service) rates as of (date). This notice describes the company’s rate request, the PUC’s role, and what actions you can take.

(company) has requested an overall rate increase of \$ ___ per year. If the company’s entire request is approved, the total bill for a residential customer using (state typical usage level) would increase from \$ ___ to \$ ___ per month or by ___%.

¹ *McCloskey v. Pa. Public Utility Commission*, 1624 CD 2017 (Order entered Oct. 11, 2018).

² 52 Pa. Code §53.45(b)(1)(i).

PAWC argues against including a specific rate increase percentage in its notice as required by Section 53.45 stating that including such information would only confuse and agitate customers.³ PAWC's proposed initial notice to customers states, "At this time, it is unclear when [utility] will file its next rate case and what the impact of the [municipal or authority acquisition] may be on your rates."⁴ Therefore, unlike the language in Section 53.45, PAWC's initial notice will not provide affected customers with any information about the potential rate impact the acquisition would have on their rates.⁵

Next, PAWC proposes that, upon request by the customer, utilities be required to provide a Statement of Reasons and Potential Bill Impact that provides a range of potential rate impacts. PAWC's proposed language for its Statement of Reasons and Potential Bill Impact states the following:

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.⁶

³ PAWC's Supplemental Comments on the TSIO, p. 3.

⁴ PAWC's Supplemental Comments on the TSIO, Attachment A. It is unclear from PAWC's Supplemental Comments whether the proposed notice would apply to the customers in the Exeter Township Application. However, it is important to note that PAWC's proposed notice may not be appropriate for its Section 1329 Exeter Township Application that has been conditionally accepted by the Commission's Bureau of Technical Utility Services. In that filing, PAWC and Exeter Township agreed to substantially raise Exeter's rates prior to the closing of the proposed transaction. PAWC's proposed notice, in its revised Exeter Township Application, provided Exeter Township customers notice of the rate increase prior to the closing of the proposed transaction. I&E believes that general notice such as the notice contemplated in PAWC's Supplemental Comments should not eliminate notice of specific rate impacts of which the Company is already aware, as evidenced in the Exeter Township Application.

⁵ PAWC's Supplemental Comments on the TSIO, Attachment A.

⁶ PAWC's Supplemental Comments on the TSIO, Attachment B.

It also includes a chart that provides three different scenarios (increase allocated to entire customer base, 50% allocated to existing customer base, 100% allocated to acquired customer base) and the potential rate impact to existing and acquired customers.

Although PAWC's claimed intent was to avoid customer confusion and agitation, the above statement and the range of potential rate impacts will likely only serve to confuse a typical customer by using technical terms. Concepts referenced in PAWC's Statement of Reasons and Potential Bill Impact such as gradualism, revenue allocation and combined sewer overflow systems are highly technical and provide customers little information about the potential rate impact of the acquisition. PAWC's proposed language contrasted with the clear, concise language in Section 53.45 does not adhere to the Commonwealth Court's directive.

It is clear from *McCloskey* that the Commonwealth Court intended for Section 1329 application notice to mirror notice spelled out in 52 Pa. Code §53.45, which would include a percentage of rate impact.⁷ In the Exeter 1329 proceeding, OCA provided sample language of how this could be accomplished in its recently filed Petition to Reject or Hold in Abeyance Acceptance of the Application⁸ and a Petition for Stay.⁹ OCA's proposed language states, "Currently, it is not known when PAW will file its next rate case. At that time PAW's request for an increase in rate base of up to \$96 million could increase wastewater rates by approximately 16%-22%. This amount could change and

⁷ *McCloskey v. Pa. Public Utility Commission*, 1624 CD 2017 (Order entered Oct. 11, 2018).

⁸ OCA Petition to Reject or Hold in Abeyance Acceptance of the Application, Docket No. A-2018-3004933.

⁹ OCA Petition for a Stay of the Proceeding, Docket No. A-2018-3004933.

some of the increase could be paid by PAW's existing water customers."¹⁰ Unlike PAWC's proposed language, OCA's language concisely informs customers about the potential rate impact of the proposed acquisition, which is consistent with *McCloskey's* directive to provide notice in accordance with Section 53.45.

B. PAWC's Proposed Delivery

I&E also disagrees with PAWC's suggested approach to fulfill the notice requirement of Section 1329 applications. Section 53.45 mandates that utilities must provide notice to the public by each of the following methods: (1) posting in each Company office where payments are accepted; (2) written or printed notice, or alternatively by bill insert as part of the monthly billing cycle; and (3) news release.

PAWC proposes a two-pronged notice approach that fails to adhere to these requirements. Under PAWC's approach, the Company's initial notice would not give affected customers the potential rate impacts the acquisition would have on their rates.¹¹ As discussed above, the initial notice will simply indicate that rates will not change until the next rate case and that it is unclear what the impact of the acquisition may be on customer rates. Next, PAWC proposes that a more detailed Statement of Reasons and Potential Bill Impact showing a range of the potential rate impacts the acquisition will have only be provided to customers upon request.

¹⁰ OCA Petition to Reject or Hold in Abeyance Acceptance of the Application, Docket No. A-2018-3004933, Appendix D.

¹¹ PAWC's Supplemental Comments on the TSIO, Attachment A.

PAWC's proposal improperly places the burden on the customer to seek out this information. The Commonwealth Court clearly determined that notice of the rate impact is required to all customers. That will not occur if PAWC improperly shifts the burden to seek out the rate impact to customers. Additionally, as noted above, the Commonwealth Court intended for the Section 1329 notice to mirror that given in general rate increase cases, which requires that notice be provided in several ways (utility offices, mailing or bill insert and news release). Requiring the customer to seek out the actual rate impact is unacceptable as it fails to adhere to these delivery methods. The Commission should require the utility to provide this information in Section 1329 proceedings just as it does in general base rate increase cases as contemplated in the *McCloskey* decision.

C. PAWC's Recommended Procedure

Finally, with respect to the appropriate procedure to resolve the divergent views on the appropriate customer notice required by the *McCloskey* decision, PAWC recommends that the Commission resolve this matter once I&E, OCA and other parties have had an opportunity to submit their comments.¹² Instead, I&E supports the use of a collaborative or working group to determine how to implement customer notice, which I&E first raised in its Reply Comments to the TSIO.¹³ That way utilities, Parties and perhaps representatives from the Commission's Bureau of Consumer Services, can provide input to ensure that utility customers receive meaningful notice.

¹² PAWC Petition for Leave to File Supplemental Comments, pp. 3-4.

¹³ I&E Reply Comments on the TSIO, p. 2.

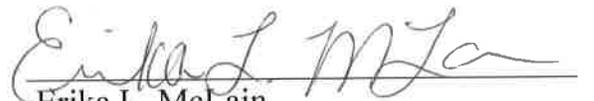
I&E recognizes that PAWC is prioritizing efficiency as it requested that I&E's response time to file these Reply Comments be shortened from 20 days to 10 days and that this matter be addressed by the Commission at its February 28, 2019 public meeting.¹⁴ While efficiency is important, I&E believes that it is more important to get this issue right. I&E puts forth the suggestion of using a collaborative or working group to address the notice requirements because that is the process the Commission used to address the wide range of Section 1329 issues that were raised in the TSIO. Prior to issuing the TSIO, Commission staff and affected stakeholders worked informally to discuss and address issues such as proposed revisions to the standard materials required for 1329 applications, guidelines for utility valuations and testimony, and procedural guidelines. Now, PAWC attempts to circumvent this process by supplanting Comments for meaningful face-to-face discussions. I&E recognizes that this issue should be resolved quickly but it also must be done in a way that ensures customers obtain the necessary information in a way that is meaningful to them. Therefore, as noted above, I&E recommends that a collaborative or working group should be convened. As a result, all interested stakeholders would be able to work through this important issue and come to a mutually agreeable resolution.

¹⁴ PAWC Petition for Leave to File Supplemental Comments, pp. 4-5.

III. CONCLUSION

I&E understands the urgency to address the Section 1329 notice requirement and appreciates the opportunity to submit these Reply Comments in response to PAWC's Supplemental Comments on the TSIO. I&E is committed to working with the Commission and stakeholders to reach a solution suitable to all.

Respectfully submitted,


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