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Via PaPUC E-Filing

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

Re: Supplemental Reply Comments to Tentative Supplemental Implementation Order
Docket No. M-2016-2543193

Dear Secretary Chiavetta:

Enclosed please find the Pennsylvania Municipal Authorities Association's Supplemental Reply Comments in the above-captioned matter.

Copies are being served on parties as identified in the attached Certificate of Service. If you have any questions, please feel free to contact me at (215) 661-0400.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
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By: 
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LIMERICK
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Section 1329
Of the Public Utility Code

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Docket No. M-2016-2543193

**SUPPLEMENTAL REPLY COMMENTS OF THE
PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION**

I. INTRODUCTION

By petition dated January 25, 2019, the Pennsylvania-American Water Company (“PAWC”) requested leave to file supplemental comments to the Pennsylvania Utility Commission’s (“PUC” or “Commission”) September 20, 2018 Tentative Supplemental Implementation Order (“Order”) in the above-referenced docket (“Petition”), specifically on the issue of the required notice to ratepayers of investor-owned utilities in connection with Section 1329 proceedings¹ in light of the recent Commonwealth Court decision in *McCloskey v. Public Utility Commission*, 195 A.3d 1055 (Pa. Cmwlth. 2018) (“*McCloskey*”). By Secretarial Letter dated January 28, 2019, the PUC granted PAWC’s Petition and, in so doing, set a deadline of February 7, 2019 for interested persons to file reply comments to PAWC’s supplemental comments. The Pennsylvania Municipal Authorities Association (“PMAA”) appreciates the opportunity to submit the following reply comments.

¹ 66 Pa. C.S. §1329, Valuation of acquired water and wastewater system.

II. COMMENTS

PMAA is a stakeholder in this matter, having submitted comments to the Order on November 5, 2018, and responsive comments on November 20, 2018. PMAA is willing to work with the Commission and the other stakeholders to develop a notice that could be used as a template for notifying existing and potential ratepayers of an investor-owned utility seeking to acquire a municipal or authority-owned water or wastewater system of the proposed acquisition and Section 1329 proceeding; provided, however, that such notice contains both adequate information regarding the rate impact on such ratepayers and information regarding the options that such ratepayers have in response to the notice. PMAA's position is that any such notice must be consistent with the Commonwealth Court's opinion in *McCloskey*, which addresses Aqua Pennsylvania Wastewater, Inc.'s ("Aqua") application to acquire the wastewater system assets of New Garden Township and the New Garden Sewer Authority. In reviewing the notice given to Aqua's ratepayers, specifically with respect to the ratepayers' due process rights, the Court stated that, "[b]ecause an increase in rates involves a substantial property right, ratepayers are entitled to notice of a Commission's administrative proceeding in which a decision is made to increase rates in a subsequent rate base proceeding." *Id.* at 1068. Therefore, the Court found that direct notice to all of the investor-owned utility's ratepayers is required in connection with a Section 1329 proceeding, and that such ratepayers must be afforded the opportunity to participate in any such proceeding. *Id.* at 1069.

Based upon the Commonwealth Court's ruling in *McCloskey*, any notice provided to an investor-owned utility's ratepayers regarding a proposed acquisition of a municipal or authority-owned system and a Section 1329 proceeding must be in accordance with 52 Pa. Code §53.45. *Id.* PMAA respectfully asserts that the proposed *Pro Forma* notices included as part of PAWC's

Petition² fail to meet the explicit requirements of *McCloskey* and 52 Pa. Code §53.45. By way of example, the notices prepared by PAWC fail to (1) adequately inform the investor-owned utility's ratepayers of the impact of the proposed acquisition on their rates; (2) advise the ratepayers that they are permitted to be a witness at a public input hearing before the Commission; (3) provide the ratepayers with all options that such ratepayers have in response to the notice (*e.g.* contacting the Office of Consumer Advocate, as well as making clear the fact that all applicable documents are available at any time on the PUC website); and (4) identify and explain the PUC's independent role in the rate approval process (as specifically required by 52 Pa. Code §53.45(b)(1)(i)). At a minimum, all of the preceding information must be included on any notice letter sent to ratepayers in connection with a Section 1329 proceeding. PAWC's *Pro Forma* document entitled Notice of Proposed Acquisition and Rate Base Addition does not include such information.

PMAA also takes note of the second *Pro Forma* document proposed by PAWC, entitled Statement of Reasons and Potential Bill Impact, which PAWC tacitly admits is not a requirement here, but which it requests the Commission make a requirement of any applicant in a Section 1329 proceeding (“...PAWC respectfully submits that the Commission should require the applicant to prepare a Statement of Reasons and Potential Bill Impact...which would be referenced in the customer notice.”) (PAWC Supplemental Comments, p. 2.) A close review of PAWC's proposed Statement of Reasons and Potential Bill Impact reveals that it is, for the most part, a mere promotional piece for a pending acquisition (*e.g.* how the acquisition promotes the Commission's policy of consolidation and regionalization; how the proposed acquisition's increased number of customers will allow it to “spread the cost of service over time, thereby

² These proposed notices include: a Notice of Proposed Acquisition and Rate Base Addition and a Statement of Reasons and Potential Bill Impact.

mitigating the rate increases that might otherwise be necessary throughout its system”; setting forth a template for the owners of the municipal or authority-owned system being acquired to list, among other things, the alleged affirmative benefits flowing from the acquisition.) PMAA does not suggest that an investor-owned utility must remain silent on its perception of a proposed acquisition of a municipal or authority-owned system; rather, the issue here is simply what type of notice to investor-owned utility ratepayers should be required under the Order, given the Commonwealth Court’s decision in *McCloskey*.

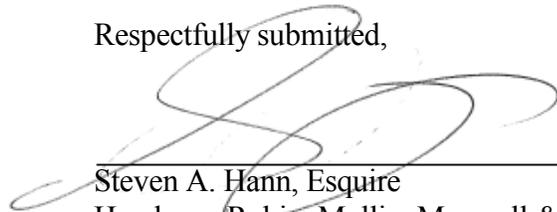
Finally, PAWC notes in its Petition that Aqua filed a petition for allowance of appeal from the *McCloskey* decision with the Supreme Court of Pennsylvania. PAWC filed an Amicus Curiae Brief supporting Aqua’s petition for allowance of appeal, in which it clearly took issue with the *McCloskey* decision, and asserted that “individualized customer notice is a requirement that could cause ratepayer confusion” (2018 WL 6975820*4). In its supplemental comments to the Order, PAWC asserts that “the inclusion of a specific rate increase percentage in the customer notice would...serve only to confuse and agitate customers.” (PAWC’s Supplemental Comments on the Tentative Supplemental Implementation Order, p. 3) Taken together, PAWC seems concerned about customer confusion; yet, PAWC is proposing one document that fails to include critical information that a ratepayer should be aware of in connection with a Section 1329 proceeding, while at the same time requesting that the Commission require applicants to prepare another document, containing information with no nexus to the notice requirements set forth in *McCloskey* and the Commission’s regulations. Therefore, although PAWC claims it would like to avoid customer confusion, its approach to the notice issue here would seem to do just the opposite. In any event, the Pennsylvania Supreme Court has not acted on Aqua’s aforementioned petition for allowance of appeal; therefore, the Commonwealth Court’s opinion

in *McCloskey* and the Commission's regulations, set forth the law in Pennsylvania, including who must receive a notice and what information the notice must contain in connection with Section 1329 proceedings. Accordingly, PMAA believes that the requirements set forth in *McCloskey*, including adherence to 52 Pa. Code §53.45, need to form the basis for such notice to ratepayers. As noted earlier, PMAA respectfully believes that PAWC's proposed notices do not meet these requirements.

III. CONCLUSION

Once again, PMAA appreciates the opportunity to submit the aforementioned reply comments to PAWC's supplemental comments to the Commission's Order, and remains willing to work with the Commission and other stakeholders to reach a consensus on the Section 1329 notice requirements.

Respectfully submitted,



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Date: February 7, 2019

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, via first class mail 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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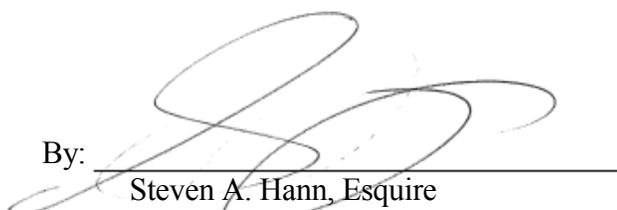
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