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20571-000

November 20, 2018

Via PaPUC E-Filing
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Pennsylvania Public Utility Commission:

The Pennsylvania Municipal Authorities Association ("PMAA"), through the undersigned, submitted comments to the Public Utility Commission ("PUC") on November 5, 2018, in response to the October 6, 2018 Pennsylvania Bulletin Notice entitled "Implementation of Section 1329 of the Public Utility Code." As provided for in the Pennsylvania Bulletin Notice, PMAA appreciates the opportunity to submit the following reply comments:

1. Fair Market Value

In the PUC's September 20, 2018 Order ("Order'), which is the subject of the aforementioned Pennsylvania Bulletin Notice, the PUC sets forth what it perceives as impediments to investor-owned utilities acquiring municipal systems at prices that are greater than the depreciated original cost (Order, pp. 4-7). For example, the PUC notes that prior to the enactment of Section 1329, the Public Utility Code discouraged the sale of public water and wastewater assets even when such sales might otherwise be in the long-term public interest (Order, p. 4). PMAA agrees with the Office of Consumer Advocate ("OCA") that such statement is speculative and unnecessary for inclusion in the Order, and that "[t]he legislative history for Section 1329 provides no support for this conclusion." (OCA comment letter, p. 3.) Moreover, PMAA does not agree that the use of depreciated original cost in municipal acquisitions is unreasonable. Rather, Section 1329 itself neither addresses what is in the long-term public interest nor suggests that the use of depreciated original cost is no longer a viable option as part of the valuation process.

2. Notice

PMAA respectfully submits that the recent Commonwealth Court decision in *McCloskey*[1] is controlling with respect to the notice requirement for a Section 1329 proceeding, including the proper universe of recipients of such notice.[2] Therefore, PMAA disagrees with those comments which seek to narrow the notice or limit the proper recipients of such notice, including those comments suggesting that direct notice to ratepayers would only add additional cost and/or confusion to a Section 1329 proceeding (*see e.g.*, Aqua Pennsylvania, Inc. ("Aqua") comment letter, pp. 7-10 and Pennsylvania-American Water Company ("PAWC") comment letter, p. 5). PMAA believes the *McCloskey* decision mandates that individualized notice must be provided to (1) ratepayers of the municipal or authority-owned system subject of the proposed acquisition, and (2) the acquiring utility's existing ratepayers, in order to provide both classification of ratepayers with sufficient opportunity to participate in any Section 1329 proceeding (*see* PAWC comment letter, pp. 4-5, which also notes that according to *McCloskey*, "individualized notice must be provided to all ratepayers, and they must be given an opportunity to participate in the Section 1329 proceeding.")

3. Rates/Ratemaking

The rates to be assessed against all of an investor-owned utility's customers and potential customers, as a result of the acquisition of a municipal or authority-owned water or wastewater system must be clear, so that (1) all of the utility's ratepayers have the opportunity to comment and participate in a Section 1329 proceeding, and (2) the PUC is able to undertake the Section 1102 balancing test required under the Public Utility Code. Certain comments submitted to the PUC seek to defer the determination of the impact of rates associated with an acquisition until after an acquisition, asserting that ratepayers will have the opportunity to participate in a future rate base proceeding in which rates are actually set (Aqua comment letter, pp. 7-10; PAWC comment letter, pp.6-7.) Indeed, such a comment is inconsistent with the Commonwealth Court's decision in *McCloskey*, where the court, in vacating the PUC's decision approving Aqua's acquisition of the New Garden System, noted that "by approving the sale and then putting off the consideration of the impact on rates to a later rate base proceeding, the PUC cannot do the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit." *McCloskey*, at p. 22. PMAA also notes that two (2) public utilities submitting comments to the Order, Suez and The York Water Company, specifically addressed the impact of rates on existing ratepayers

[1] *Tanya J. McCloskey, Acting Consumer Advocate v. Pennsylvania Public Utility Commission*, No. 1624 C.D. 2017 (Pa. Cmwlth. October 11, 2018) ("*McCloskey*").
[2] PMAA addressed these issues as Comment Number 3 in its November 5, 2018 comment letter.

of the acquiring investor-owned utility in the acquisition of other systems. For example, Suez asserted that the "cross subsidization of rates should be discouraged" and that "[t]he ability to spread the reduced rates across a large existing customer base…may not necessarily result in the best qualified utility acquiring the system…" (Suez comment letter, p. 3.) Moreover, Suez also stated that "[t]here should be a heightened burden of proof upon an applicant that is proposing cost subsidization by existing customers over an extended period of time." (Suez comment letter, p. 3.). The York Water Company's filing reflects its agreement with the *McCloskey* decision, with its comment that the PUC "should address the impact on rates and determine whether there is a substantial public benefit to a public utility's acquisition of a water or wastewater system as part of the Section 1329 process." (The York Water Company's comment letter, p. 2.) Moreover, The York Water Company also asserted that with certain exceptions, "the ability to spread the costs across a large existing customer base…should not be allowed…" (The York Water Company's comment letter, p. 2.) Therefore, consistent with Comment Number 2 hereinabove and the *McCloskey* decision (as well as diverse comments submitted to the Order): (1) notice of a proposed acquisition must also be given to all of the acquiring utility's ratepayers, irrespective of geographic location, and (2) the impact on rates associated with the acquisition of a municipal or authority-owned system, must be addressed early in the process, so that the impact of such rates on both the customers of the system to be acquired and the acquiring utility's existing ratepayers can be evaluated, allowing those impacted to participate in any applicable proceeding.

4. Costs/Benefits

PMAA disagrees with those comments opposing a requirement that the acquiring utility provide an estimate of the annual revenue of the municipal system under the acquiring utility's ownership. (Aqua comment letter, pp. 14-16.) To the contrary, PMAA believes that a "cost of service study," which includes an estimate of the annual revenue requirement of the municipal system under the acquiring utility's ownership, provides relevant information regarding the proposed acquisition. PMAA also supports the Order to the extent that it requires certain information regarding the proposed transaction, with which the PUC and customers of the acquiring utility can evaluate and analyze the costs/benefits of the proposed transaction, including a description of general expense savings and efficiencies under the acquiring utility's ownership. (*see* Aqua comment letter, pp. 17-18.)

Once again, PMAA thanks the PUC for the opportunity to submit the aforementioned reply comments.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN

By: _____
STEVEN A. HANN

SAH:adr