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VIA E-FILING

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

**Re: 2023 Review of All Jurisdictional Fixed Utilities' Universal Service Programs;
Docket No. M-2023-3038944**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") are the Comments of the National Association of Water Companies – Pennsylvania Chapter regarding the Commission's 2023 Review of All Jurisdictional Fixed Utilities' Universal Service Programs.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns about this filing.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "David P. Zambito", written over a faint, larger version of the signature.

BY: DAVID P. ZAMBITO

Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

DPZ:kmg
Enclosure

cc: Marc Lucca, President, NAWC-PA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Review of All Jurisdictional Fixed Utilities’ : Docket No. M-2023-3038944
Universal Service Programs :

COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), in response to the Secretarial Letter in this matter, published in the *Pennsylvania Bulletin* on April 8, 2023, to submit these Comments for consideration by the Pennsylvania Public Utility Commission (“Commission”).

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania that are regulated by the Commission.¹ Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, the Commission and other regulatory agencies, as well as the courts. NAWC thanks the Commission for this opportunity to file comments.

Several members of NAWC will provide their individual comments to the Commission. NAWC submits these comments to supplement the comments of individual NAWC members. The notice in the *Pennsylvania Bulletin* did not mention an opportunity to submit Reply Comments.

¹ The members of NAWC are: Aqua Pennsylvania, Inc.; Columbia Water Company; Newtown Artesian Water Company; Pennsylvania-American Water Company; The York Water Company; and, Veolia Water Pennsylvania, Inc.. Newtown Artesian Water Company is a Class B water utility; the remaining members of NAWC are Class A water utilities. In addition to water operations, several NAWC members operate Commission-regulated wastewater systems.

NAWC and its members would be happy to submit Reply Comments or other additional information regarding customer assistance programs (“CAPs”) if the Commission believes that would be helpful.

II. COMMENTS

The Commission requested comments responding to fourteen specific questions. NAWC is primarily interested in Question #12, which specifically concerns jurisdictional water public utilities. NAWC will therefore address this question first. NAWC will then address the remaining questions in the Secretarial Letter.

12. Should the Customer Assistance Program (“CAP”) Policy Statement be amended to include jurisdictional water public utilities, and, if so, what barriers if any exist to doing so and how can those barriers be overcome?

Several of NAWC’s members are both water utilities and wastewater utilities. NAWC assumes that the Commission is interested in comments on whether the CAP Policy Statement should be amended to include jurisdictional water utilities as well as jurisdictional wastewater utilities.

NAWC recommends against amending the existing CAP Policy Statement to include water and/or wastewater utilities at this time. The CAP Policy Statement would need to be substantially revised to apply to water and wastewater utilities. For example, gas and electric utilities are statutorily required to have universal service and energy conservation plans (“USECPs”). 66 Pa. C.S. §§ 2203(6) and (8), 2804 (8) and (9). There is no comparable statutory requirement for water or wastewater utilities. The existing CAP Policy Statement depends heavily on USECP proceedings. For example, minimum payments and maximum credits are set in utility-specific

USECPs. 52 Pa. Code §§ 69.265(3)(i) and (v)). There is no comparable proceeding for water or wastewater utilities.

Instead, water and wastewater utilities' CAPs are approved in base rate cases. Frequently, these CAPs are developed through lengthy negotiations with the parties to those cases – including statutory advocates, representatives of low-income customers, and others. Water and wastewater utilities must comply with the plans, as approved by the Commission, or risk enforcement proceedings for failing to comply with a Commission order. In contrast, the existing CAP Policy Statement does not establish a binding norm or have the full force and effect of law. A policy statement “merely serves as an announcement to the public of a policy which the agency hopes to implement in future rulemaking or adjudications.” *Manor v. Dep’t of Pub. Welfare*, 796 A.2d 1020, 1026 (Pa. Cmwlth. 2002).

NAWC recommends that the Commission draft a new policy statement designed specifically for CAPs of water and wastewater utilities. NAWC further recommends that this policy statement be drafted using a collaborative that would include representatives from the water and wastewater industries, statutory advocates, representatives of low-income customers, and the Commission.

NAWC also recommends that this collaboration commence in or after 2025. Water and wastewater utility CAPs currently are in their infancy and the industry needs additional time to study what does and does not work in the water and wastewater industry. When it comes to CAPs, one size does not fit all utilities in all industries. Waiting a brief period before the Commission starts this collaborative, so that all stakeholders can gain more experience with CAPs in the water and wastewater industry, would be in the public interest.

In the alternative, NAWC recommends that the Commission consider a phased approach, in which a preliminary version of a CAP policy statement would take effect pending the outcome of the collaborative discussed above. When the collaborative completes its work, the Commission could adopt and implement a more robust CAP Policy Statement for water and wastewater utilities.

In terms of what should be in the CAP Policy Statement for water and wastewater utilities, NAWC recommends that the policy statement apply only to large utilities (much like the existing policy statement for electric and gas utilities applies only to large utilities). Additionally, NAWC recommends that the CAP Policy Statement provide each utility with the flexibility to develop a plan that fits its unique culture and its unique needs; the Commission should not mandate that all utilities have similar CAPs. After all, the Commission is not a “super-board of directors” for public utilities and has no right of management over them. *Peoples Cab Co. v. Pa. Pub. Util. Comm’n*, 137 A.2d 873, 878 (Pa. Super. 1957). Finally, the new CAP Policy Statement for water and wastewater utilities should address cost recovery; water and wastewater utilities should not be burdened with the costs of a CAP without full recovery of the costs.

- 1. What regulatory barriers are in place that would prevent utilities from having one utility do intake and then having that information provided to other utilities that provide service to that consumer for the purpose of universal service and CAP enrollment?**
- 3. How can consumer consent be built into the intake process that permits the utility doing the intake to provide the enrollment information to the other utilities serving the consumer?**
- 4. Is an automatic enrollment program feasible where any mechanism through which an electronic exchange of information between a utility and a state social service agency confirms the eligibility of public benefits whether or not the information is expressly authorized by the household? If express authorization is needed, rather than automatic enrollment, can that express authorization be provided one time in a uniform application rather than on a utility-by-utility basis using separate applications?**

10. Should utilities be required to develop and use standardized CAP forms and CAP procedures? What are the barriers, if any, of establishing a common application?

These questions concern the benefits, detriments, and barriers to integrating a utility's CAP with third parties (including utilities in other industries). As stated above, CAPs for water and wastewater utilities are in their infancy. Water and wastewater utilities should have the opportunity to develop their CAPs further without being required to integrate their CAPs with third parties. Prematurely requiring water and wastewater utilities to integrate their CAPs with third parties could inhibit the development of water and wastewater CAPs. For example, requiring utilities in different industries to develop a standardized intake form or standardized CAP processes could inhibit desirable changes in water and wastewater utilities' CAPs. At this early stage in the development of water and wastewater CAPs, inhibiting change would not be beneficial for the utility or its customers.

NAWC believes the above questions should be addressed in the collaborative that develops a new policy statement specifically designed for the CAPs of water and wastewater utilities. Nevertheless, NAWC offers the following brief comments in response to these questions.

In terms of regulatory barriers to integrating a utility's CAP with third parties, CAPs for water and wastewater utilities are approved by the Commission in rate cases, with which utilities must comply. Water and wastewater utilities need to be sure that sharing customer information with a third party is allowed by the Commission's rate case order. Utilities do not want to face an enforcement proceeding because they shared customers' private information in violation of the Commission's rate case order.

An additional regulatory barrier to integration is that there is currently no assurance of reciprocity. For example, if a water utility would provide customer information to an electric utility, there is no assurance that the electric utility will reciprocate and provide information that

might help the water utility's customers qualify for CAP benefits from the water utility. Utilities are reluctant to incur the costs of providing customer information to sister utilities without assurances that they will reap the benefits of receiving similar information from other utilities.

Another regulatory barrier to integration concerns cost recovery for sharing customer information. Providing customers' information to other utilities has a cost to the water/wastewater utility, but it is unclear whether that cost is recoverable in rates since this activity does not benefit the utility or its ratepayers (it benefits the electric or gas utility and its ratepayers).

A final regulatory barrier to integration concerns the differences in service territories between utilities in different industries. In the experience of NAWC's members, sharing information with sister utilities is most effective when there is a substantial overlap in the utilities' service territories, but this rarely occurs with large utilities. More commonly, one large utility's service territory overlaps the service territory of multiple utilities in another industry.

Non-regulatory issues also pose substantial barriers to integration. Operational and technical issues frequently arise in sharing information in a useful manner. For example, many utilities have programs with tiers of benefits. Shared information would need to be detailed enough to allow a utility to find what it needs to determine which tier of benefits applies to a particular customer, without being so voluminous that the utility is discouraged from wading through a mass of information to find what is useful. In addition, virtually any method of sharing information electronically raises cybersecurity concerns.

2. **What regulatory barriers or other obstacles exist if an outside provider does the intake on behalf of multiple utilities serving the consumer and what solutions exist to overcome any barriers?**
5. **Should CAPs be administered statewide across all utility service territories rather than on a utility-by-utility basis? If so, what are the barriers to accomplishing this and what are the benefits and drawbacks to this approach? If not, what are the**

benefits and drawbacks of continuing to administer the programs on a utility-by-utility basis?

NAWC believes that a legislative change would be necessary to mandate either of these approaches. As an agency created by the General Assembly, the Commission has only the powers given to it by the General Assembly, either explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Pennsylvania Public Utility Code (“Code”) currently does not give the Commission authority to require a utility to delegate the administration of its CAP (in whole or in part) to a third party.

Of course, the Commission could encourage utilities to participate in such a program voluntarily. One barrier to this approach is cost. The outside provider doing intake, or administering the CAP, would need to be compensated for this service. This cost would need to be allocated equitably among all of the participating utilities. Utilities are unlikely to participate if the allocated cost of the third party administrator is more than the cost of the utility implementing its own CAP.

7. What additional consumer education and outreach could be undertaken to make more low-income consumers aware of the benefits that may be available to them?

NAWC members are continually trying new methods of reaching out to low-income customers, such as through welcome packets when members expand into new service areas. NAWC members have found that partnering with community groups that reach low income customers is a particularly effective way of reaching out to consumers. For example, one NAWC member recently partnered with a food bank, which distributed a flier that included QR codes allowing customers to quickly access information about the CAPs of several local utilities. It is unclear, however, how the Commission could mandate that utilities engage in such partnerships.

Additional consumer education and outreach methods include:

Cold calls;

Door hangers;

Bill inserts/onserts;

Community events and events at community centers and religious centers;

Senior Fairs;

Social media such as TikTok, Instagram Facebook and Twitter;

Partnerships with DHS and the PUC (consumer education events);

Outside entities delivering the message; and

Text messaging campaigns.

14. What changes are required to the Commission’s existing policies or regulations to incorporate improvements?

NAWC incorporates by reference its response to Question 12.

- 6. What changes would be required to EDCs’ and NGDCs’ existing, Commission-approved universal service and energy conservation programs to incorporate improvements and could changes be addressed in a streamlined fashion?**
- 8. Can recertification periods in the existing CAP Policy Statement at Section 69.265(8)(viii) be extended so that otherwise eligible consumers do not lose benefits solely due to the fact that they timely failed to recertify their eligibility?**
- 9. Can the default provisions in the existing CAP Policy Statement at Section 69.265(9) be modified to reduce the chances that otherwise eligible consumers do not lose benefits solely due to the failure to comply with one of the articulated default provisions?**
- 11. What other additions or changes to the existing CAP Policy Statement should be made to increase eligibility, enrollment and maintenance of CAP benefits?**
- 13. If a coordinated enrollment process could be achieved with respect to CAP, could that same process be applied to identify eligibility for a utility's Low Income Usage Reduction Program (LIURP) or eligibility for receipt of hardship fund grants?**

These questions pertain to the existing CAP Policy Statement and electric and gas utilities. NAWC has no comment in response to these questions.

III. CONCLUSION

NAWC thanks the Commission for the opportunity to submit these comments. NAWC looks forward to continuing to work with the Commission regarding CAPs for water and wastewater utilities.

Respectfully submitted,



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