

OBJECTIONS PAGE

Please sign this sheet if you would like to **oppose** the Joint Petition for Settlement signed by Pennsylvania American Water Co., the PUC's Bureau of Investigation and Enforcement, the Office of Small Business Advocate, the Office of Consumer Advocate, and other active parties in the case of Pennsylvania Public Utility Commission v. Pennsylvania American Water Co., Docket No. R-2017-2595853. **You are encouraged to provide written comments below and/or attach additional pages**, setting forth any facts and explanation for your objections.

By adding my signature below, I am indicating that I have read the terms of the Settlement Agreement and wish to OPPOSE the Settlement. I understand that I may file objections (below and/or by attachment to this Objections Page) to the Settlement and exceptions to a Recommended Decision and that my complaint will be resolved as part of the PUC order resolving this case.

Shannon Brown



Please Print Your Full Name

Please Sign Your Full Name

Date: 10/22/2017

Please Write Your Address Here:

406 Highland Ave.

Clarks Summit, PA 18411

Docket Number of Your Complaint

C-2017-2611572

Objections:

Please see attached

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	
v.	Docket No.: C-2017-2611572
Pennsylvania American Water Company	

Comments in Opposition to Proposed Settlement

Summary of Facts

On or about April 28, 2017, Pennsylvania American Water (PAWC) initiated a proposed rate increase action. PAWC seeks an approximate 17.06% rate increase¹ and claims that the sole option of debt-financed investments in infrastructure necessitates the rate increase.² PAWC receives a current guaranteed rate of return of 10.25%³ but still claims that an *anticipated* 7.20% return on common equity

is obviously less than required, by any standard, to permit a reasonable rate of return on such common equity and to provide a reasonable opportunity for the Company to attract the additional capital required to finance needed plant additions.”⁴

However, American Water Works (American Water), a publicly traded company and a non-public -utility, owns PAWC.⁵ American Water officially states that it maintains \$1.4 billion in “additional

¹ Statement of Specific Reasons for Proposed Increase in Rates, page 1, <http://www.puc.pa.gov/pdocs/1519284.pdf>.

² See id, 1-2.

³ SEC 8-K, pages 66 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>.

⁴ Statement of Specific Reasons for Proposed Increase in Rates, page 1, <http://www.puc.pa.gov/pdocs/1519284.pdf>.

⁵ Form 10-K, Section 3: EX-21.1 (2016), <http://ir.amwater.com/Cache/38162937.PDF?O=PDF&T=&Y=&D=&FID=38162937&iid=4004387>

debt capacity through 2021” to fund upgrades and maintains a “strong cash flow” under the current tariff.⁶ American Water’s dividends increased an estimated 415% between 2008 and 2017.⁷

The Pennsylvania Public Utility Commission (PUC) mailed a proposed settlement on October 16, 2017, and received by Opponent on October 20, 2017, with a deadline for opposition to the settlement due before October 26, 2017.

The Proposed Settlement suggests approval of a general, 9.38% rate increase resulting in a revenue increase of \$61.85 million per year. The Proposed Settlement bars PAWC from further rate increases until March 31, 2020.

Opposition Comments—Legal Argument

Opposition Comment 1: The current tariff shows a Constitutionally sound “just and reasonable rate of return,” and PAWC fails to affirmatively challenge the current tariff.

Public utility rates “shall be just and reasonable.”

66 Pa. Cons. Stat § 1301. The public utility bears the entire burden of affirmatively and substantially proving that the rate increase is “just and reasonable.” *Popowsky v. Pennsylvania Public Utility Commission*, 674 A.2d 1149, 1153 (Pa. Cmwlth. Ct. 1996); see also 66 Pa. Cons. Stat. § 315. Notably, the utility must affirmatively prove every element to justify a rate increase and burden-shifting never occurs. *Emporium Water Co. v. Pennsylvania Public Utility Com’n*, 955 A.2d 456, 464-65 (Pa. Cmwlth. Ct. 2008).

A rate need only provide a “*fair* rate of return” to the public utility to meet the “just and reasonable” standard. *Emporium Water Co. v. Pennsylvania Public Utility Com’n*, 955 A.2d 456, 462-63 (Pa. Commw. Ct. 2008)(emphasis added); *National Utilities, Inc. v. Pennsylvania Public Utility Com’n*, 709 A.2d 972, 976 (Pa. Commw. Ct. 1998)(discussing fair-rate means a reasonable rate). The fair-rate weighs the genuine concerns of captive ratepayers, including service quality, against the interests of investors who voluntarily choose to invest in a regulated entity. A fair rate means:

[r]ates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as

⁶ SEC 8-K, pages 47, 51 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>

⁷ For example, NASDAQ American Water Works Dividend Date & History <http://www.nasdaq.com/symbol/awk/dividend-history>.

invalid, even though they might produce only a meager return on the so-called 'fair value' rate base.

Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944).

PAWC receives a current, guaranteed, rate of return of 10.25%.⁸ American Water officially states that it maintains \$1.4 billion in "additional debt capacity through 2021" to fund upgrades and maintains a "strong cash flow" *under the current tariff*.⁹ Therefore, PAWC fails to affirmatively establish the Constitutionally and statutorily requisite requirements for a rate increase.

Opposition Comment 2: PAWC's parent company's dividend practices cannot support rate increases.

The public utility must exclude from its rate-base any non-investor-supplied funds when calculating returns. See Arrowhead Public Service Corp. v. Pennsylvania Public Utility Com'n, 600 A.2d 251, 255-56 (Pa. Cmwlth. Ct. 1991). The latter distinguishes cases of 1) truly cash-starved public utilities with proportionally heavy debt loads, which may justify rate increases depending on debt analysis and rates of return on equity, from 2) public utilities with substantial net-profits and fair rates-of-return where rate increases are not proper. Id.

Fundamentally, the analytical focus remains on the rate-of-return to the public utility because the rate-of-return calculation only considers assets that are "used and useful" in the public service. Emporium Water Co. v. Pennsylvania Public Utility Com'n, 955 A.2d 456, 461 n.11 (Pa. Cmwlth. Ct. 2008)(citing Barasch v. Pennsylvania Public Utility Commission, 532 A.2d 325, 336 (Pa. 1987)). The PUC may exclude unreasonable or imprudent expenses. Popowsky v. Pennsylvania Public Utility Commission, 674 A.2d 1149, 1154 (Pa. Cmwlth. Ct. 1996)(rate of return analysis rests with the public utility).

The latter point becomes material due to the relationship between American Water and PAWC. See 66 Pa. Cons. Stat. § 2101 (affiliated entities). A public utility cannot make payments to an affiliated entity without first satisfactorily establishing the reasonableness of the payment:

⁸ SEC 8-K, pages 66 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>.

⁹ SEC 8-K, pages 47, 51 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>

In any proceeding, upon the commission's own motion, or upon application or complaint, involving rates or practices of any public utility, the commission may disallow, in whole or in part, any payment or compensation to an affiliated interest for any services rendered or property or service furnished, or any property, right, or thing received by such public utility, or donation given or received, under existing contracts or arrangements with such affiliated interest unless such public utility shall establish the reasonableness thereof.

66 Pa. Cons. Stat. § 2101. The U.S. Supreme Court long decided that the parent-subsidiary relationship does not obviate the public-utility rate analysis. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 596-99, 603, 605 (1944)(Hope Natural Gas (public utility) a subsidiary of Standard Oil Co. (N.J.)).

The conflation of PAWC profits and American Water's dividend practices raises unanswered questions about the need for a rate increase.

At the same time as notifying ratepayers of the proposed 17.06% rate increase in Pennsylvania, American Water, the non-utility parent, announced a quarterly dividend increase of 10.7%, which raised the quarterly dividend to 41.5 cents per share or \$1.66 per share per year.¹⁰ Using readily available historical data, American Water's dividends increased 415% between 2008 and 2017—from \$0.40 per share to \$1.66 per share per year.¹¹

Per official records, approximately 177 million shares remain outstanding for American Water.¹² Applying the latest dividend of 41.5 cents per quarter, that gives a total quarterly dividend payment of approximately \$73.7 million or approximate annual dividends of \$295 million. Using American Water's own stated ratio of 50% of net income paid in dividends, that places net profits per year at approximately \$590 million.¹³

¹⁰ Press release, American Water Increases Quarterly Dividend by 10.7 Percent, <http://pr.amwater.com/PressReleases/releasedetail.cfm?ReleaseID=1022337> (hereinafter Press Release)

¹¹ For example, NASDAQ American Water Works Dividend Date & History <http://www.nasdaq.com/symbol/awk/dividend-history>. See also American Water Investor Relations, Dividends, <http://ir.amwater.com/dividends>

¹² American Water Stock Information, <http://ir.amwater.com/Stock>

¹³ Pennsylvania represents 22% of revenue and the highest return-on-equity, apportioning the net profits suggests Pennsylvania providing approximately \$129.8 million in net profits—or approximately 20% more than the proposed rate increase under the new tariff.

The 2016 10-K Form filing shows \$775 million in income before estimated-

Since Pennsylvania represents 22% of American Water's revenue¹⁴ and represents the highest return-on-equity for American Water, apportioning the net profits suggests that Pennsylvania ratepayers provide approximately \$129.8 million in regulated, net profits to American Water for dividends.

Nevertheless, PAWC assumes debt-financing and offers only debt-financing of infrastructure upgrades instead of adjusting claimed profits to account-for known and anticipated infrastructure upgrades as required of a public utility.

Put simply, all data shows PAWC as a profitable organization and providing tens of millions of ratepayer dollars in dividends to shareholders who enjoy breathtaking dividend increases of 400+%. Such business choices and practices cannot sustain ratepayer increases.

While providing the façade of a modest "reduction" in the original proposal, the Proposed Settlement still approves a \$61.85 million rate increase without adequately addressing the dividend or affiliated-entity issues.

Opposition Comment 3: The Proposed Settlement violates state and federal Equal Protection.

The Proposed Settlement suggests that PAWC shareholders increase their contribution to "hardship funds" by approximately \$140,000 to a total of \$450,000. The increased contribution amounts to only 0.22% and only 0.7% total contribution to the hardship funds **as compared to just the rate increase** and not accounting for current profits.

First, the hardship bargaining violates state and federal Equal Protection because such funds apply to hardship cases—not to general ratepayers who are affected by the overall, proposed rate increase. PAWC cannot benefit from trading hardship contributions designated for special classes while sustaining millions in rate increases for similarly situated ratepayers.

Second, the hardship contribution fails to address the nexus between current profits under the current tariff, increased hardships due to

taxes and \$468 million or \$472 million in net income attributable to just common stockholders. Form 10-K, pages 70, 108, 110, 112, 114, and Note 16: Earning Per Share (2016), American Water also shows e. <http://ir.amwater.com/Cache/38162937.PDF?O=PDF&T=&Y=&D=&FID=38162937&iid=4004387>

¹⁴ Form 10-K, 3 (2016), <http://ir.amwater.com/Cache/38162937.PDF?O=PDF&T=&Y=&D=&FID=38162937&iid=4004387> showing Pennsylvania provides \$639 million in operating revenues to American Water and 22.3% of total operating revenues of \$2.871 billion. Also,

the proposed rate increases (originally proposed at 17.06%), the Proposed Settlement, and effects on rate payers moving forward—especially where an undue burden shifts to non-hardship ratepayers.

Opposition Comment 4: The two-year bar on rate increases fails to adequately protect ratepayers.

The Proposed Settlement would take effect on January 1, 2018. The Proposed Settlement bars PAWC from filing for rate increases before March 31, 2020.

Despite the officially-reported strong financial performance,¹⁵ American Water, PAWC's parent, engaged in *25 rate-related cases just between December 1, 2015 and December 12, 2016*.¹⁶ In fact, American Water, as of December 12, 2016, awaited tariff increases in half of its other subsidiaries.¹⁷ At least four, not including the instant general rate increase, involved Pennsylvania.¹⁸ Furthermore, American Water promotes its “experience in securing appropriate rates of return and promoting constructive regulatory frameworks” as evidence of future earnings growth for investors suggesting additional actions.¹⁹

Opponent moves for denial of any rate increase due to PAWC's failure to meet statutorily and Constitutionally required standards and striking of the Proposed Settlement. Nevertheless, the two-year bar, considering PAWC's and American Water's officially stated objectives, simply does not protect ratepayers from a steep on-ramp for incremental and major increases in the reasonable future.

¹⁵ See SEC 8-K, pages 70 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305> . Apparently showing operating revenues at approximately 300% of operating expenses.

¹⁶ See SEC 8-K, pages 67-68 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>. Six cases pending and 19 rate increases granted.

¹⁷ SEC 8-K, pages 67 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>

¹⁸ SEC 8-K, pages 67 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>

¹⁹ SEC 8-K, page 60 (12/15/2016), <http://www.snl.com/Cache/c37130037.html> or <http://ir.amwater.com/Doc/Index?did=38723305>

Opposition Comment 5: As a public utility, the Pennsylvania law imposes a duty on PAWC to provide adequate service quality including infrastructure upgrades.

Service quality remains an important factor when determining fairness of rates. 66 Pa. Cons. Stat. § 526 (service issues justify denying a rate increase). The PUC must balance rate increases with service quality when determining a “fair rate.” National Utilities, 709 A.2d at 976-80 (detailed analysis of service quality as a substantial factor). By implication, ongoing service quality, such as infrastructure upgrades or replacements, should factor into the analysis. See National Utilities, 709 A.2d at 976-80 (no Takings if service at issue); 66 Pa. Cons. Stat. § 523 (permitting adjustments based on adequacy of service).

PAWC states that it replaced “approximately 450 miles of aging pipelines [in Pennsylvania]... of its nearly 10,700 mile network [in Pennsylvania]....”²⁰ In other words, after the last rate increase and during a time of sharply increasing dividends based on net profits (dividends increasing 177% just during that period) and strong overall financial performance, PAWC replaced only 4.2% of the infrastructure in Pennsylvania in its regulatory commitment to ongoing utility service.²¹ The 4.2% service updates are apparently not due to cash starvation or debt impediments as demonstrated by the millions in net profits and adequate debt reserves as stated by American Water.

The latter becomes even more troubling because American Water and PAWC admit that flexible mechanisms exist for recovery of *bona fide* infrastructure replacements without general rate increases.²² American Water, in one year alone, made 19 uses of these mechanisms.²³ Furthermore, in 2016, American Water received \$28 million in rate increases outside a general rate increase and

²⁰ See Mailing.

²¹ The 4.2% is also consistent with Form 10-K showing \$639 million in Pennsylvania in 2016 revenues and \$28 million in non-general-rate-increase charges in 2016. Compare page 3 with page 40, 10-K (2016). This suggests that the infrastructure investment was already reimbursed and obviating a general rate increase.

²² Form 10-K, 6-7 (2016),

<http://ir.amwater.com/Cache/38162937.PDF?O=PDF&T=&Y=&D=&FID=38162937&iid=4004387>

²³ See SEC 8-K, pages 67-68 (12/15/2016),

<http://www.snl.com/Cache/c37130037.html> or

<http://ir.amwater.com/Doc/Index?did=38723305>. Six cases pending and 19 rate increases granted.

another \$1 million on January 1, 2017.²⁴ On the current facts, there seems little or no justification for a general tariff increase based on alleged infrastructure replacements, under a proposed settlement that provides little protection for ratepayers to guarantee that the general rate increase will in fact be used for infrastructure.²⁵ Ratepayers should also be expressly aware that, apparently, the rate increase contributes to the *debt-financing* capacity for the alleged, future, infrastructure upgrades—not direct payment for those upgrades. That is, the Proposed Settlement fails to address why a general rate increase is needed to support debt-financing, not payment, of infrastructure. The failure to address this critical issue risks leaving ratepayers liable for billions in debt-financed infrastructure should one or both companies collapse. Ratepayers reasonably understand that a rate increase to pay for infrastructure upgrades means just that—not profits going to dividends while ratepayers get debt-encumbered infrastructure with ratepayers potentially liable for the debt in the event of a collapse of the public utility or its parent. The Proposed Settlement does not appear to address this situation and should fail.

Prayer for Relief

Opponent moves the PUC to void the Proposed Settlement (October 16, 2017) and moves the PUC to deny any rate increases.

Signed



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Dated

22 October 2017

²⁴ Form 10-K, 40 (2016),
<http://ir.amwater.com/Cache/38162937.PDF?O=PDF&T=&Y=&D=&FID=38162937&iid=4004387>

²⁵ See, e.g., Form 10-K, Note 10: Long-term Debt (2016),
<http://ir.amwater.com/Cache/38162937.PDF?O=PDF&T=&Y=&D=&FID=38162937&iid=4004387> showing a reduction in debt between 2015 and 2016.