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November 3, 2017

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v.
Pennsylvania-American Water Company
Docket Nos. R-2017-2595853, *et al.***

Dear Secretary Chiavetta:

Enclosed please find the **Response of Pennsylvania-American Water Company to the Objections to the Joint Petition for Settlement of Rate Investigation** (the "Response") in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies of the Response are being served upon the presiding Administrative Law Judges, Dennis J. Buckley and Benjamin J. Myers, and all active parties.

If you have any questions, please do not hesitate to contact me directly at 215.963.5034.

Very truly yours,

Anthony C. DeCusatis

ACD/ap

c: The Honorable Dennis J. Buckley (w/encls.)
The Honorable Benjamin J. Myers (w/encls.)
Per Certificate of Service (w/encls.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	**DOCKET NOS. R-2017-2595853, *et al.***
PENNSYLVANIA-AMERICAN WATER COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Response of Pennsylvania-American Water Company to the Objections to the Joint Petition for Settlement of Rate Investigation** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: November 3, 2017

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	**DOCKET NOS. R-2017-2595853, *et al.***
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	

RESPONSE OF PENNSYLVANIA-AMERICAN WATER COMPANY TO OBJECTIONS TO THE JOINT PETITION FOR SETTLEMENT OF RATE INVESTIGATION

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	**DOCKET NOS. R-2017-2595853,** *et al.*
PENNSYLVANIA-AMERICAN WATER COMPANY	:	

RESPONSE OF PENNSYLVANIA-AMERICAN WATER COMPANY TO OBJECTIONS TO THE JOINT PETITION FOR SETTLEMENT OF RATE INVESTIGATION

On October 16, 2017, Pennsylvania-American Water Company ("PAWC" or the "Company"), the Bureau of Investigation and Enforcement ("BI&E"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), AK Steel Corp. ("AK Steel"), the Commission on Economic Opportunity ("CEO") and the Pennsylvania-American Water Large Users Group ("PAWLUG") (collectively, the "Joint Petitioners"), representing all of the parties that participated actively in this case, filed with the Pennsylvania Public Utility Commission ("PUC" or the "Commission") a Joint Petition for Settlement of Rate Investigation ("Joint Petition"). If approved, the settlement set forth in the Joint Petition ("Settlement") would resolve all of the issues in this case.

The Joint Petition was accompanied by Statements in Support in which the Joint Petitioners expressed their full support for the Settlement and explained why they believe the Settlement is in the public interest and should be approved by the Administrative Law Judges ("ALJs") and the Commission. Additionally, a hearing was held on September 26, 2017, at which the Joint Petitioners moved into evidence the extensive, detailed testimony and numerous accompanying exhibits that comprise the evidentiary record in this case. Significantly, PAWC

and other Joint Petitioners, in their respective Statements in Support, carefully reviewed the record evidence and provided record citations for evidence supporting all of the substantive terms of the Settlement. Thus, although the Settlement is – at least in part – a "black box" settlement – the Statements in Support provide a well-defined roadmap of the copious record evidence that underlies and supports the Settlement.

Also on October 16, 2017, the OCA served the Joint Petition and a summary of the terms of the Settlement upon all of the forty-one *pro se* Complainants in this case.[1] The *pro se* Complainants had not participated actively in the case up to that time and some of them had chosen, instead, to testify at one of the nine public input hearings held across the Commonwealth, which included a "smart hearing" held on July 27, 2017.[2] The OCA advised the *pro se* Complainants that, if they wished to submit comments with respect to the Settlement, their comments should be served on the ALJs and post-marked no later than October 26, 2017.

As of October 30, 2017, objections to the Settlement were timely served by ten *pro se* Complainants. The ALJs forwarded those documents to the parties on October 30, 2017, and, on the same day, issued an Order allowing the Joint Petitioners to file and serve responses to the objections by November 3, 2017. Pursuant to that Order, PAWC is hereby responding to the objections it has received.

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[1] The OCA's letter also provided the web address at which interested parties could access the entire Joint Petition and all of its accompanying appendices and exhibits, including the Joint Petitioners' Statements in Support.

[2] A list of all of the public input hearings held in this case is set forth at pages 3-4 of the Joint Petition.

I. OVERVIEW

As previously indicated, ten *pro se* Complainants served objections to the Settlement. Six of the ten Complainants are customers of the Company's Pocono service area.[3] Two of the Pocono Complainants also testified at the public input hearing held in East Stroudsburg.[4] The remaining *pro se* Complainants are customers located in McEwensville (Fred William Wesner),[5] Coatesville/East Fallowfield (Casey Hogan), Scranton (Christopher Visco) and New Cumberland (Barry Fenicle). Mr. Hogan testified at the East Fallowfield public input hearing.[6] Mr. Visco testified at the Wilkes-Barre public input hearing.[7] And, Mr. Fenicle testified at the "smart hearing" in Harrisburg.[8]

The objections of various individual *pro se* Complainants state their opposition to the increases that would result from the rates agreed to in the unanimous Settlement. In particular, the Complainants express concern about the impact of the increase on homeowners who are on a "fixed income" or are senior retirees and upon customers in what they characterize as economically distressed geographic areas. Additionally, several of the objecting Complainants question any increase that they perceive to be greater than an annual rate of "inflation" of

[3] These six *pro se* Complainants consist of Noel Netel, Virginia Cozzi, Stephen R. Schwarz, Linda Waddington-Tully, Alice Piper, and Raymond Saunders.

[4] Tr. 232-235 (Linda Waddington-Tully) and Tr. 235-237 (Raymond Saunders).

[5] As explained hereafter, the relief sought by Mr. Wesner, as set forth in his objection (i.e., to have his wastewater service billed based on metered water usage), will be granted under the terms of the Settlement. PAWC acquired the McEwensville system in October 2015, and, at that time, wastewater service was billed as a flat rate by the prior owner. Wastewater billing based on metered water rates had to await the filing of the Company's first rate case following its acquisition.

[6] Tr. 321-323.

[7] Tr. 187-192.

[8] Tr. 98-111.

between 2% and 3%.[9] There are several important factors that bear on these contentions, which the objecting Complainants either ignore or fail to grasp.

First, the base rate increase agreed to in the Settlement, which would not become effective until the beginning of 2018, represents the first base rate increase for the Company since its 2013 base rate case was concluded, which increased rates effective January 1, 2014. Thus, if the Settlement is approved as proposed, four years will have elapsed since the Company's base rates were last increased. Moreover, the Settlement provides for a three-year stay-out, such that base rates could not increase again until January 2021 at the earliest. Thus, the Company will have had only *two* base rate increases in *seven* years. Moreover, in light of the three-year stay-out provision, the overall average increase in revenues of 9.41% under the Settlement rates represents annual increases of approximately 3.13% over the stay-out period. In other words, when all of the terms of the Settlement – i.e., the proposed increase and the stay-out provision – are viewed in their entirety (as they should be), the Settlement results in a base rate increases very close to the recent, historic annual "inflation" rates cited by objecting parties.

Second, and notwithstanding the fact that the Settlement's base rate increase approximates historic measures of annual inflation, the rate of inflation is not a meaningful benchmark for assessing the justness and reasonableness of the increase to which the Company is entitled. At the outset, it should be noted, as explained in detail in the Company's direct testimony and Statement in Support, PAWC has been very successful in controlling the growth in its operating and maintenance ("O&M") expenses.[10] In fact, the Company's claim for O&M expenses for its water operations (excluding depreciation) in this case is approximately $2.4

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[9] *See, e.g.*, Objections of Virginia Cozzi and Barry Fenicle.

[10] PAWC St. 1, p. 6. *See* PAWC Statement in Support, pp. 17-18.

million *less* than the amount it requested in its 2013 base rate cases even though the Company's existing rates have been in effect since January 2014 and its water service footprint has expanded by the acquisition of a number of water systems since its last base rate case.[11] Thus, because of the Company's prudent management, the one category of expenditures that might be expected to correlate with the rate of inflation – O&E expenses – has actually decreased and, in fact, is not the cause of the increase sought by the Company. Rather, the two principal factors driving the Company's need for rate relief are not correlated with the rate of inflation, namely, its continued investment in new and replacement plant and equipment and the well-documented multi-year trend of declining per-customer residential consumption. These factors are discussed at length in the Company's Statement in Support, where the record evidence demonstrating the impact of these factors on the Company's revenue requirement is reviewed in detail.[12]

With regard to its level of investment, between the end of the fully projected future test year ("FPFTY") in the Company's last case (December 31, 2014) and the end of the FPFTY employed in this case (December 31, 2018), the Company will have invested over $1.26 billion in new and replacement plant and equipment.[13] The Company's level of investment is consistent with – and promotes – the policies of both the Commission and the General Assembly to

[11] *Id.* Moreover, many of the Company's acquisitions were in furtherance of the Commission's well-established policy encouraging larger, financially viable water utilities to acquire smaller, troubled water and wastewater systems. *See* PAWC St. 8. This policy has been enshrined in the Commission's regulations (52 Pa. Code § 69.711(b) (stating that the Commission will provide incentives "to foster acquisitions of suitable water and wastewater systems by viable utilities when the acquisitions are in the public interest") and in numerous orders of the Commission (*e.g.*, *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R- R-00072711 (Final Order entered July 31, 2008) (granting Aqua Pennsylvania a performance factor increase in its rate of return in recognition of its efforts to promote the Commission's policy of acquiring small, poorly performing water utilities)).

[12] PAWC Statement in Support, pp. 18-19.

[13] PAWC St. 1, p. 5; PAWC St. 3, pp. 3-36 and 41-50.

encourage utilities to accelerate their investment in vital infrastructure.[14] For water utilities, a significant driver of increasing levels of investment is the need to continue to satisfy new, and increasingly-strict, drinking water and environmental standards.

At the same time PAWC has been making substantial investments in new and replacement plant and equipment to maintain and enhance service to customers, it has been experiencing – and will continue to experience – a well-established multi-year trend of declining per-customer residential consumption, which undisputed testimony in this case demonstrates averages 920 gallons per customer (2.14%) per year.[15] This means that the costs of providing water service – the bulk of which are fixed costs that do not vary directly with the amount of water used – have to be recovered over fewer billing units and, therefore, necessitate a higher rate per unit. The primary driver of this decline in customer usage is water-efficient plumbing fixtures and water-efficient appliances, which are mandated by federal law, and secondarily, increased customer awareness of the need to conserve water.[16]

Neither of the two principal factors driving the Company's need for rate relief correlates with – or could be limited to – the rate of inflation. Indeed, the Commission clearly would not endorse attempts by water utilities to curtail their investment in vital utility infrastructure to meet an arbitrary and wholly unreasonable benchmark such as maintaining rate increases at the rate of "inflation." To the contrary, and as previously explained, the Commission has recognized the need for increasing and accelerating rates of investment in order to replace aging infrastructure

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[14] These policies are well documented and were embodied in the terms of Act 11 of 2012, which added Sections 1350-1360 to the Pennsylvania Public Utility Code for the express purposes of providing an additional means for Pennsylvania utilities to increase their investment in new and replacement infrastructure.

[15] PAWC St. 1, p. 29; PAWC St. 9.

[16] *Id.* In fact, the Company itself promotes conservation and uses various means to increase customer awareness of the benefits conservation can provide.

over a reasonable replacement time-frame and to make timely additions of new plant and equipment to meet evolving governmental drinking water and environmental regulations and, in that way, assure safe, reasonable and reliable service to customers.

In summary, it is unreasonable to try to equate increases in the Company's overall revenue requirement to an arbitrary figure like the inflation rate. More importantly, such simplistic measures ignore the need for responsible water and wastewater utilities to make timely investments in plant and equipment. Such prudent investments are driven by the need to assure safe, reasonable and reliable utility service both currently and for the foreseeable future and, as such, cannot – and should not – be correlated to superficial and irrelevant factors such as changes in the consumer price index.

In rate proceedings, the statutory parties and active intervenors analyze a utility's request for a rate increase based on a comprehensive review of operational, financial and customer service factors, as the law of this Commonwealth requires. In so doing, they base their conclusions about the increase to which a utility is entitled on the same criteria the Commission itself uses to decide a rate case, namely, whether, in the exercise of prudent management, a utility's revenues will be sufficient to cover its reasonable expenses, including depreciation and taxes, and provide a fair return on its property used and useful in furnishing utility service. These legal standards are applied with equal rigor in both settled and litigated cases. The rigorous application of those legal standards in this case has led all of the Joint Petitioners to conclude – and to strongly affirm in their respective Statements in Support – that the Settlement is fair and in the public interest.

Third, the potential impact of the Settlement rates on low-income customers has been carefully considered by all parties in this case. Indeed, CEO intervened in this case specifically

to monitor and safeguard the interests of low-income customers, although it should be noted that BI&E and the OCA also focused on low-income customers and low-income issues in this case.

Consideration of the interests of low-income customers is reflected in several aspects of the Settlement. Thus, under the Settlement terms, the Joint Petitioners have agreed to employ the authority granted by Act 11 of 2012 to materially mitigate the increases in wastewater rates with only a *de minimis* resulting effect on water rates.[17] Similarly, recognizing that increases in the customer charge can have a greater impact on low-income customers versus an average residential customer, the Company agreed to substantially reduce the increase in the water customer charge from $18.50, as originally proposed, to $16.50, which approximates the OCA's recommendation in this case.[18] Finally, and perhaps most importantly, PAWC has continued to demonstrate its leadership in addressing the interests of low-income and payment-troubled customers by making substantial, robust increases in its low-income assistance programs. Specifically, under the Settlement, PAWC will increase the low-income customer charge discount for residential water customers from 80% to 85% and will increase the total-bill discount for wastewater customers from 15% to 20%.[19] In addition, as part of its Settlement commitments, PAWC would increase its shareholders' voluntary contribution to its hardship grant program from $300,000 to $400,000 per year for water service and from $10,000 to $50,000 per year for wastewater service.[20] Additionally, with respect to customers who, in complaints filed with the Commission or in testimony at public input hearings, stated that they had difficulty paying their water or wastewater bills, the Company reached out through its

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[17] *See* PAWC's Statement in Support, p. 7 and n.7.

[18] Joint Petition, p. 16. *See* PAWC Statement in Support, pp. 42-44.

[19] Joint Petition, Paragraph 25; PAWC Statement in Support, p. 35.

[20] Joint Petition, Paragraph 26; PAWC Statement in Support, p. 35.

customer service personnel to determine if those customers would be eligible for any of its low-income assistance programs.

PAWC believes that the summary of Settlement terms and of the relevant record evidence set forth above, together with the detailed information in its and other Joint Petitioners' Statements in Support, demonstrate that the objections filed by the *pro se* Complainants to the Settlement are not supported by the evidence, lack merit, and, therefore, do not represent any credible challenge to the unanimous consensus of the Joint Petitioners that the Settlement is in the public interest and should be approved. Although the foregoing analysis disposes of virtually all of the objections lodged against the Settlement, for completeness, each of the *pro se* Complainants' objections is discussed hereafter.

II. THE *PRO SE* COMPLAINANTS' OBJECTIONS

A. The Pocono Area Complainants

All of the Pocono area complainants object to the increase in their bills that the Settlement would provide. Ms. Cozzi and Mr. Saunders assert that the proposed increase will be problematic for those on a "fixed income." Ms. Waddington-Tully states that the increase is too high because "water is a necessity." Mr. Schwarz questions whether the increase has been "justified" and seeks evidence of the extent to which the Company's need for an increase has been investigated in this proceeding. All of these contentions have been addressed above. Additionally, as previously noted, the evidentiary support for the Settlement is set forth in detail in the Company's Statement in Support. Moreover, the rigor with which the Company's rate request was investigated by the statutory parties and intervenors is evident from the extensive testimony and accompanying exhibits they presented in this case, which were admitted into the

record at the September 26, 2017 evidentiary hearing and is further evidenced by the discussion of the Settlement's terms set forth in the Joint Petitioners' Statements in Support.

In addition to her general averments that the Settlement rates would cause a "hardship" for senior citizens and those on fixed income, Ms. Piper averred that her water quality was "poor." Ms. Piper filed a formal Complaint that was served on the Company on June 16, 2017. Notably, her formal Complaint, while also alleging the then-proposed increase of approximately 16.4% would be a hardship, made no mention of any water quality or other service problems. In any event, the Company reached out to Ms. Piper on October 31, 2017 to take water samples and to generally investigate her concerns about water quality. She indicated she would not be available and asked Company personnel to contact her at a later date, which they have been attempting to do. Additionally, because Ms. Piper had suggested in her Complaint filed in June that she may have a "hardship" paying her water bill, the Company also reached out to her at that time to try to determine if she would be eligible for low-income assistance.

Mr. Netel objected generally to the increase in wastewater bills under the Settlement and noted that he expected that the increase in his monthly bill could approximate $30. However, as Mr. Netel acknowledged, his usage (wastewater service is billed on the basis of water usage) is "double" that of an average residential customer. Moreover, it should be noted that customers served by the Pocono wastewater operations had been paying substantially less than customers in the Company's wastewater Rate Zone 1 since its last base rate case.[21]

[21] *See* Appendix I (Residential Average Monthly Bill Comparison). As shown, an average residential customer in the Pocono wastewater operations pays approximately $10.50 less per month than a customer in wastewater Rate Zone 1.

B. Fred William Wesner

Mr. Wesner is a water and wastewater customer located in the McEwensville service area of the Company. The Company acquired the McEwensville water and wastewater system in October 2015. Customers on that system had water meters in place and were billed metered water rates by the prior owner. However, the prior owner charged a flat rate for wastewater service.

Mr. Wesner has filed an objection to the Settlement because he objects to paying a flat wastewater rate. He asserts that the flat rate is based on "average" water usage, and he uses less than "average." Under the Settlement rates, all wastewater customers on the former McEwensville system will be charged metered wastewater rates that have a customer charge and a volumetric charge that is based on their water usage. The conversion to metered wastewater rates had to await the filing of a base rate case, and this is the first base rate case by the Company since it acquired the McEwensville wastewater system. Hence, the Settlement will provide the metered wastewater rates that Mr. Wesner is seeking.

C. Casey Hogan

Mr. Hogan is a customer located in the Coatesville area. Mr. Hogan contends that because Coatesville is a depressed economic area, any increase in water or wastewater rates is likely to be a "hardship" for customers in that area. Mr. Hogan's contentions, and similar contentions from other objecting Complainants, were addressed in Sections I. and II.A., above.

D. Christopher E. Visco

The substance of Mr. Visco's objections was set forth in a letter consisting of two paragraphs. The focus of the first paragraph of Mr. Visco's letter is Paragraph 33 of the Joint Petition, in which the Company agreed to invest $2.2 million to construct water main extensions

under Rule 27.1(F) of its water tariff, which authorizes main extensions to be installed without customer contributions subject to Commission approval in order to address health and safety concerns. Although the nature of Mr. Visco's objection is far from clear, as best it can be discerned from the first paragraph of his letter, Mr. Visco assumes: (1) that the Company is currently holding $2.2 million of customers' money – apparently, he is equating that sum to a contribution-in-aid-of-construction made by customers and earmarked for investment by the Company, at some future date, in the identified main extensions; (2) the pool of $2.2 million of allegedly customer-contributed capital is being held in "an account", (3) the "account" bears "interest" at "10%;" and (4) customers are entitled to the "interest" on that "account". Every one of Mr. Visco's assumptions is wrong.

There is no pool of customer-contributed money and, therefore, it cannot be sitting in any "account" accumulating "interest" at any rate – let alone "interest" of "10%". The Company has agreed that it will commit *its investors' funds* to construct main extensions to serve customers for whom eligibility under Rule 27.1(F) has been established. That money has not been contributed by any customer, and it certainly is not sitting in any "escrow" account earning interest. Rather, it will be obtained (most likely as part of debt financing for the applicable budgetary period) by the Company and invested in the main extensions when they are constructed. Those mains are not currently in rate base, and the committed investment is over and above the level of plant additions that the Company claimed in this case. As a consequence, the Company's investment would not be reflected in its rate base until its next base rate case. Thus, when the main extensions are constructed and placed in service, the Company will have to bear the burden of uncompensated costs to construct those mains until its next base rate case. Clearly, the Company's main extension commitment does not provide any benefit to the Company as Mr.

Visco erroneously assumed. To the contrary, that commitment imposes a material uncompensated cost.

In the second paragraph of his letter, Mr. Visco observes that the City of Scranton has experienced declines in population since at least 1996 while, at the same time, the geographic area of the City has not been reduced and, therefore, the same infrastructure that formally served a larger population is still needed to serve the currently smaller population. Mr. Visco acknowledges that "this is not a PAWC issue," but notes that it is a factor that should be considered in determining the increase to City residents. The Company would note that this factor was addressed in detail in the testimony of its witnesses Nevirauskas and Connelly[22] and, in light of the population and economic trends affecting the City of Scranton, the Company proposed employing the authority granted by Act 11 of 2012 to allocate a portion of the wastewater revenue requirement associated with its Scranton wastewater operations to its much large base of water customers. Although the Settlement allocates a smaller portion of the Scranton wastewater operation's revenue requirement to water customers than the Company initially proposed, the settlement allocation does, in fact, mitigate the increase in wastewater rates in the Scranton wastewater operations.[23] Accordingly, the concern expressed by Mr. Visco has been considered by the Joint Petitioners and addressed in the Settlement.

E. Barry Fenicle

Mr. Fenicle's objections consist of a three-page letter addressed to the ALJs. Some of Mr. Fenicle's objections reprise his testimony at the "smart hearing." Overall, however, the gravamen of his objections consists largely of rank hearsay and unsubstantiated allegations that,

[22] *See* PAWC St. 1, pp. 10-18 and PAWC St. 14.

[23] Joint Petition, Paragraph 35.d; PAWC Statement in Support, pp. 7-8.

in many instances, appear totally unmoored (*e.g.* based on his "survey," Mr. Fenicle confidently asserts that "approximately 300 small businesses" will "close" if the Settlement increase is approved). Although the Company will respond to the inaccuracies in Mr. Fenicle's objections, the ALJs and the Commission need to consider the extent to which Mr. Fenicle's willingness to make facially implausible statements is, itself, the strongest evidence that his objections, in their entirety, lack any semblance of credibility.

In his testimony at the July 27, 2017, smart hearing, Mr. Fenicle profusely thanked the OCA for the "tremendous job" it was doing in this case.[24] Indeed, the Company can attest that that OCA – as well as the other statutory parties – rigorously investigated the Company's rate filing, issued extensive discovery (the Company responded to approximately 700 interrogatories, many including numerous subparts), and submitted voluminous testimony and accompanying exhibits that were placed in the evidentiary record of this case. Astonishingly, given his prior, sworn testimony, Mr. Fenicle has done a complete about-face in his objections and now accuses the statutory advocates of having "sold out" the very customers whose interests they have a legal obligation to protect.[25] Of course, Mr. Fenicle's harsh accusation of the statutory advocates' alleged dereliction of duty – like virtually all of his objections – was made without any reference to the facts, to the record evidence or to the long and detailed procedural history of this case. As recounted above, in the Joint Petition[26] and in the Joint Petitioners' Statements in Support,[27] and as evidenced by the extensive evidentiary record created in this case, the statutory parties (as well as other intervenors) thoroughly and carefully reviewed all aspects of the Company's

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[24] Tr. 98.

[25] Fenicle Objections, p. 1.

[26] Joint Petition, Paragraphs 1-8.

[27] *See, e.g.*, PAWC Statement in Support, pp. 1-4; BI&E Statement in Support, pp. 1-4; OCA Statement in Support, pp. 1-5.

operations and finances and rigorously investigated the basis for its request to increase its rates. Based on that review and investigation, the Joint Petitioners reached the consensus – with compromises on all sides – reflected in the Settlement.

Furthermore, no less rigor is applied in statutory advocates' investigation of a rate request simply because a case is resolved by a settlement. To the contrary, settlements are typically achieved based on the recognition by all parties that the settled outcome is consistent with Commission and appellate court precedent and is well within the range of potential litigated outcomes. For that reason – and because of the full confidence it has in the ability and willingness of statutory parties to fulfill their statutory obligation to represent customers and the public interest – the Commission's has repeatedly and consistently encouraged litigants to pursue settlements. The Commission policy prescriptions and precedent on this issue are set forth at length in the Company's Statement in Support (pp. 11-16). As explained therein, the Commission has correctly noted that settlements can do a better job of promoting the public interest than full litigation by, for example, reducing the cost of litigation that, absent settlement, would be borne by customers.[28] At the same time, settlements – like the Settlement in this case – are typically achieved only after extensive investigation and analysis and the creation of a deep and comprehensive evidentiary record. And, as previously explained, the Joint Petitioners have carefully reviewed the record evidence supporting all of the Settlement's terms and copiously documented that record evidence in their Statements in Support – just as the ALJs directed them to do at the September 26, 2017 hearing.

It is also noteworthy that Mr. Fencile attempts to create the totally erroneous impression that all of the Company's prior base rate cases he alludes to in the second paragraph of his

[28] *See* PAWC Statement in Support, pp. 11-12.

objections were resolved by settlement. To the contrary, eight of the fifteen cases listed (which cover an approximately 30-year period) – i.e., over 50% – were *fully litigated*.[29] And, in all of the litigated cases, the Commission granted the Company substantial increases because it properly found and determined – based upon the evidence and applicable law – that the Company was entitled to those increases. Thus, Mr. Fenicle's attempt to draw some meaningful distinction between the outcome of settled rate cases and fully litigated rate cases is totally fallacious.

Mr. Fencile also attempts to introduce totally non-record matter with his averment that "300 small businesses" in Pennsylvania will close if the Settlement is approved. The sole basis for this averment is Mr. Fenicle's alleged "survey" of a "small area" in Central Pennsylvania. Mr. Fenicle does not, of course, provide any information about his "survey" or why he thinks its results – such they might be – could be extrapolated in the manner he suggests. On the other hand, the proposition Mr. Fenicle seeks to advance is so facially implausible it should be disregarded for that reason alone. Moreover, if an increase in the Company's rates were to have such devastating effects on "small businesses" across the entire Commonwealth, one suspects the Commission and the OSBA would have learned about that catastrophic possibility from sources other than Mr. Fenicle's musings.

Equally puzzling are Mr. Fenicle's assertions based on his undisclosed and totally unauthenticated calculation of a so-called "Realistic Cumulative Impact." While offering the "Realistic Cumulative Impact" as, presumably, some form of recognized economic concept, Mr. Fenicle does not cite to any authority that might shed light on what his contrivance is or whether it has ever been afforded any validity by anyone – let alone by utility regulatory commissions.

[29] The 1988, 1989, 1990, 1992, 1993, 1994, 2001 and 2003 rate cases were fully litigated.

Suffice it to say, research has not revealed any reference to the alleged economic concept Mr. Fenicle labels "Realistic Cumulative Impact" nor any evidence that it has ever been used by any regulatory commission or court. Nonetheless, Mr. Fenicle asserts, based on his undisclosed calculations, that he can turn a rate increase of 9.41% into an increase of 55%. In addition to the fact that Mr. Fenicle's assertion is totally unsubstantiated – indeed, incapable of being substantiated – his allegation flies in the face of logic and commonsense.

This brings us to Mr. Fenicle's most outrageous assertion,[30] namely, that the low turn-out at the New Cumberland public input hearings could be attributed to customers' fear of retribution from PAWC – i.e., having their water "turned off, their bills inexplicably raised or [the] quality of their water decreased." Mr. Fenicle stops short of accusing PAWC of doing anything at all that might warrant a reasonable person actually harboring the irrational fears he attributes to his shadowy, unidentified acquaintances. In fact, it is inconceivable that the Company would – or could – do anything of the sort.

Innumerable customers have testified at public input hearings across the Commonwealth over many prior PAWC rate cases. From that broad experience over many years, there is *zero* evidence that any rational person could harbor the kinds of fears Mr. Fenicle attributes to his unidentified acquaintances. In addition, until Mr. Fenicle filed his objections, there has never been any report or any evidence of any kind that any customer was inhibited from testifying at a public input hearing out of fear of retribution. Moreover, Mr. Fenicle is making his accusations with reference to customers located in a service area that is literally across the river from the Commission and from the offices of BI&E, the OCA and the OSBA. In fact, a member of BI&E

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[30] Fencile Objections, p. 2, second paragraph.

testified that he lives on the West Shore and is a customer of PAWC.[31] The suggestion that PAWC would – or could – do or say anything that might suggest customers could face retribution for testifying at a public input hearing without such impropriety coming to the attention of the Commission, its staff, BI&E, the OCA, or the OSBA is simply preposterous.

Mr. Fencile also contends PAWC – as well as "other water/wastewater companies" – can "mandate" that homeowners connect to their water and wastewater systems and prevent customers from "installing wells."[32] Obviously, PAWC cannot "mandate" that any homeowner must become its customer, nor can it prohibit a customer from drilling a well and leaving the PAWC distribution system. When such requirements are imposed, they are done by municipalities, which have the authority, as government entities, to pass ordinances that their elected officials determine are in the best interests of their residents and in the public interest. And, when such ordinances are adopted, they are based on the reasonable and well-founded belief that allowing on-lot wells and septic systems in developed or developing areas would compromise health and safety for all of a municipality's citizens. The bottom line, however, is that if Mr. Fenicle does not like such ordinances, he needs to take it up with the elected officials who voted to adopt them – not PAWC or any other water or wastewater public utility. Furthermore, nothing in the Company's rate filing or in the terms of the Settlement implicates this extraneous issue. Even if Mr. Fenicle's assertions had any validity or were based on any realistic scenario (and they clearly are not), this is not the forum in which they should or could be addressed.

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[31] BI&E St. 6, p. 7, line 8.

[32] Fenicle Objections, p. 3.

At page 3 of his objections, Mr. Fencile lists five points that he wishes to advance for consideration by the ALJs and the Commission. Items 3 and 4 on that list relate to his erroneous assertion that a public utility can compel homeowners to connect to its system and can prohibit a customer from drilling a well and leaving the utility's distribution system. Those errors were discussed previously.

Item 1 is Mr. Fenicle's contention that any rate increase should be limited to "2% to 3%." The defects associated with trying to impose a simplistic and arbitrary benchmark like the one Mr. Fenicle recommends were discussed in Section I, *supra*. Moreover, imposing an arbitrary limit on an allowed increase when, based on the facts and sound ratemaking principles, a utility has justified a larger increase is contrary to the law and could not be sustained on appeal even if the Commission were to give any credence to Mr. Fenicle's recommendation.

Item 2 is Mr. Fenicle's recommendation that the Commission prohibit any future increases in water or wastewater rates for five years. While a utility can agree, as part of a settlement, to not file another rate case for a specified period – and, in fact, that is precisely what the Settlement achieves with the agreed-upon three-year stay-out – the Commission lacks authority to unilaterally prohibit a utility from filing for rate relief. Of course, any rate increase request, once filed, would be carefully and judiciously reviewed to determine if the proposed increase is justified.

In Item 5, Mr. Fenicle asks the Commission to "prohibit PAWC from acquiring any additional water/wastewater systems." At the outset, it must be emphasized that PAWC cannot acquire another water or wastewater system without the approval of the Commission.[33] And, the Commission is not authorized to grant its approval unless it finds that the acquisition is in the

[33] *See* 66 Pa.C.S. § 1102(a).

public interest and will produce an affirmative public benefit.[34] Consequently, no acquisition can occur unless those criteria are satisfied and, therefore, the "prohibition" Mr. Fenicle advocates is not needed and, in any event, is contrary to the law. Moreover, every acquisition that PAWC has made in the past had to clear the legal hurdle imposed by *City of York* – i.e., the Company had to prove, and the Commission had to find, based on substantial evidence, that the acquisition was in the public interest and would produce an affirmative public benefit. Mr. Fenicle's recommendation is nothing more than a veiled attempt to collaterally attack all of those Final Orders of the Commission that made the required findings in approving the Company's prior acquisitions. In addition, this is another issue where not only is Mr. Fenicle's position totally unsustainable, it represents an improper attempt to introduce a matter that is far outside the scope of this proceeding.

It is, however, ironic that Mr. Fenicle now wants to prohibit acquisitions by the Company in light of the fact that he and his family were major beneficiaries of the Company's acquisition of the company that supplied water to the Fenicles prior to the Company taking over that service. In 1987, the Company, with the Commission's prior approval, acquired the Red Land Water Company ("Red Land"), which was the Fenciles' water supplier before they became customers of the Company. Red Land was an independent water company totally unaffiliated with the Company or the American Water system.[35] In fact, it was a small, troubled water system with

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[34] 66 Pa.C.S. § 1103. *City of York v. Pa. P.U.C.*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*"City of York"*). *Accord Popowsky v. Pa. P.U.C.*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

[35] In her testimony at the New Cumberland public input hearing (Tr. 161, lines 24-25), Mr. Fenicle's wife asserted that "in 1987 Pennsylvania-American Water purchased the Riverton Water Company . . ." That is not correct. The Fenicles were customers of Red Land, not the Riverton Consolidated Water Company ("Riverton"). Riverton was one of three subsidiaries (along with Keystone Water Company and Western Pennsylvania Water Company) owned by the American Water Works Company, Inc. ("American Water") that provided water service in Pennsylvania under common, state-wide operational control and management. Riverton was merged into the Keystone Water Company, with the Commission's prior approval, to form PAWC, as of January 1, 1987, and Western Pennsylvania

significant water quality problems, which were spelled out in detail in the Company's report to the Commission on January 27, 1988, a copy of which is attached as Appendix A.

As noted in the Company's report to the Commission, Red Land's well water supply was contaminated with levels of nitrites that made it a health risk to children under the age of one. The contamination occurred because of fertilizers applied to nearby farm fields. Unlike the prior owner, the Company, after its acquisition, felt the need to notify customers that the Red Land well water should not be consumed by infants.

As also explained in the Company's report to the Commission, even before the acquisition of Red Land had been completed, the Company had begun work on a major pipeline project to interconnect the Red Land system to the Company's distribution system in order to bring water from the Company's fully-treated and high-quality supply to replace the compromised well water Red Land had been providing. That project was completed, and the former Red Land customers – including the Fenicle household – began to experience the benefits of a safe, high-quality water supply from a viable water company. The acquisition and improvements made by the Company also assured that the Fenciles would continue to receive safe, reasonable and reliable service for as long as they wanted it.

The pipeline project and other major improvements to the Red Land system, including the installation of meters, represented a significant investment by the Company. However, because the Company acquired the Red Land system and consolidated it both operationally and for ratemaking purposes with the rest of its distribution system, the rates it charged the former Red Land customers did not approach the full cost of providing them the significantly improved

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Water Company was subsequently merged into the Company. *See Pa. P.U.C. v. Pennsylvania-American Water Co.*, 1989 Pa. PUC LEXIS 170 at *7-8 (Pa. P.U.C., Final Order entered Oct. 27, 1989).

service made possible by it acquisition and subsequently constructed improvements. Thus, the Fenciles were major, direct beneficiaries of the Company's acquisition of Red Land and of the significant investments it made to improve their service. However, at the same time, because they were rolled-into the Company's larger customer base, they paid rates well below the level they would have had to bear if the same service improvements had been made by a stand-alone company unaffiliated with PAWC or the American Water system. Astoundingly, after personally receiving all of those significant benefits – which the Fenicles inexplicably refuse to acknowledge – Mr. Fencile wants to impose a prohibition on any further acquisitions. In short, Mr. Fenicle received the full benefits of becoming a Company customer when the Red Land System was acquired, but now wants to draw a line in the sand and eliminate any possibility that the same kinds of benefits could be extended to other potential customers who are suffering from poor service provided by troubled and nonviable water and wastewater systems like Red Land. That is simply wrong.

For all of the reasons set forth above in this Section III.E., Mr. Fenicle's objections should be soundly and emphatically rejected by the ALJs and the Commission.

III. CONCLUSION

For the reasons set forth above, the objections filed by the *pro se* Complainants should be rejected, the Joint Petition should be granted, and the Settlement approved by the ALJs and the Commission without modification.

Respectfully submitted,

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Counsel for
Pennsylvania-American Water Company

Dated: November 3, 2017

DB1/ 94257698.1

APPENDIX A

Pennsylvania-American Water Company's January 1, 1988 Report to the Pennsylvania Public Utility Commission Regarding Red Land Water Company

AN AMERICAN WATER WORKS SYSTEM COMPANY

January 27, 1988

The Honorable William Shane
Chairman
Public Utility Commission
104 North Office Building
Harrisburg, Pennsylvania 17120

Dear Chairman Shane:

Pennsylvania-American Water Company has made a practice of acquiring troubled water companies with the objective of bringing those operations into compliance with applicable laws and regulations. At the time of acquisition, most of these systems were operating in a sub-standard fashion without the capability to implement remedial measures. Many of the problems which plague these systems cannot be corrected immediately upon our acquisition of the systems, but instead require capital projects such as pipelines, treatment plants etc., which take time to complete.

As of July 1, 1987, we acquired the Redland Water Company, a troubled water company with many problems including water quality and quantity. The water quality problems centered largely on the well supply being vulnerable to high levels of Nitrates from the application of fertilizers by farmers to nearby fields. We were aware of this before acquiring the Redland system and took steps to eliminate the problem by constructing a pipeline to interconnect the Redland system to the existing Pennsylvania-American water distribution system. We expect the pipeline which is under construction to be completed in the Spring. Meanwhile, we are providing the accompanying notice to our Redland customers. While we are under no legal obligation to provide this notice, we have decided to use it to keep our customers fully informed.

800 W. HERSHEYPARK DRIVE • HERSHEY, PA 17033 • (717) 533-5000
IN PENNSYLVANIA • (800) 822-2145

We want the Commission to know that Pennsylvania-American Water Company is committed to providing the highest quality service to all of our customers. Should you have any questions, please let me know.

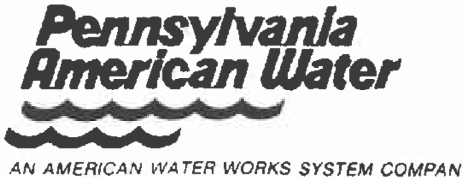
Sincerely,

Gerald C. Smith
President

Enclosure

cc: Linda C. Taliaferro, Commissioner
Frank Fischl, Commissioner
William H. Smith, Commissioner
John G. Alford, Director
Jerry Rich, Secretary

cc: R.A. Croker
R.D. Hugus
E.J. Patterson, Jr.



AN AMERICAN WATER WORKS SYSTEM COMPANY

CAPITOL DIVISION

January 26, 1988

IMPORTANT NOTICE

Pennsylvania American Water Company reports that levels of Nitrate in the Red Land wells have approached the maximum level allowable in public water supplies. Since these wells presently serve as the sole source of supply for the Red Land area, Nitrate levels are a cause for concern.

The ingestion of high amounts of Nitrate can cause a disease in infant children called Methemoglobinemia (Blue Baby Snydrome). As a result, Pennsylvania American Water Company customers residing in the Red Land area and having infant children should use bottled water for drinking for infants and in the preparation of infant formula. Tap water can continue to be used for bathing and sanitary purposes. Children over 1 year and adults are not affected by the elevated Nitrate levels.

Nitrates are difficult to remove from water supplies and boiling does not remove them.

Nitrates in well supplies can result from the over application of certain fertilizers to nearby fields. Pennsylvania American has recognized the potential of the Red Land wells to develop elevated Nitrate levels and is in the process of constructing a pipeline from the Reesers Summit area to Red Land. Once this pipeline is complete, Red Land customers of Pennsylvania American will receive water which contains consistently low Nitrate levels. The pipeline is expected to be complete in the spring. Until then, customers should follow the precaution in this notice carefully. This notice is being given after consultation with and in cooperation with the Pennsylvania Department of Environmental Resources.

If you have any questions regarding this notice, please call 761-6363 between 8:00 A.M. and 4:30 P.M. Monday thru Friday.

Richard C. Neubauer
Manager

RCN/bh

4349 CARLISLE PIKE • CAMP HILL, PA 17011 • (717) 761-6363 • (717) 534-2606

VERIFICATION

I, ROD NEVIRAUSKAS, hereby state that the facts set forth in the foregoing Response to Objections to the Joint Petition for Settlement of Rate Investigation are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated : November 3, 2017

Rod Nevirauskas
Senior Director of Rates and Regulations for
Pennsylvania-American Water Company