


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 28, 2020

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

Re: Pennsylvania Public Utility Commission
v.
Pennsylvania-American Water Company
Docket Nos. R-2020-3019369 (Water)
C-2020-3019751
R-2020-3019371 (Wastewater)
C-2020-3019754

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Office of Consumer Advocate's Notice to Plead and Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company's Base Rate Proceedings, in the above-referenced proceedings.

Please note that the Office of Consumer Advocate is respectfully requesting that the Chief Administrative Law Judge direct the Parties to file an Answer to the Motion within ten (10) days of service.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Enclosures:

cc: The Honorable Charles E. Rainey, Jr. **(email only)**
The Honorable Conrad A. Johnson **(email only)**
Certificate of Service

*289097

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3019369 (Water)
v.	:	C-2020-3019751
Pennsylvania-American Water Company	:	R-2020-3019371 (Wastewater)
	:	C-2020-3019754

NOTICE TO PLEAD

You are hereby advised to file a written response to the attached OCA's Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company's Base Rate Proceedings within twenty (20) days after the date of service **or within a shorter period, if so directed by the Chief Administrative Law Judge**. If you do not file a written response to OCA's Expedited Motion, the Chief Administrative Law Judge may rule in favor of OCA on the attached Expedited Motion without a hearing.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

A copy should also be served on the undersigned counsel, the Presiding Officer and all other parties.

Respectfully submitted,

/s/ Harrison W. Breitman
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Dated: May 28, 2020
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3019369 (Water)
v.	:	C-2020-3019751
Pennsylvania-American Water Company	:	R-2020-3019371 (Wastewater)
	:	C-2020-3019754

THE OFFICE OF CONSUMER ADVOCATE’S EXPEDITED MOTION FOR AN
EXTENSION OF THE STATUTORY SUSPENSION PERIOD OF PENNSYLVANIA
AMERICAN WATER COMPANY’S BASE RATE PROCEEDINGS

I. INTRODUCTION

As fully set forth below, pursuant to the authority issued in both the Pennsylvania Public Utility Commission’s (“Commission”) Emergency Order dated March 20, 2020¹, and in Governor Tom Wolf’s Disaster Proclamation attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19 (“Coronavirus” or “COVID”), the Office of Consumer Advocate respectfully requests that Chief Administrative Law Judge Charles E. Rainey, Jr. issue a Commission order extending the statutory suspension period arising under 66 Pa. C.S. Section 1308(d) for Pennsylvania American Water Company’s (“PAWC” or “Company”) rate cases at Docket Nos. R-2020-3019369 and R-2020-3019371 by forty-five (45) days.

The OCA respectfully requests expedited consideration of its Motion. An expedited resolution is necessary because the OCA’s ability to conduct an adequate investigation of PAWC’s base rate filings is at issue. Moreover, the OCA respectfully requests that the Chief Administrative

¹ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262, Emergency Order (Mar. 20, 2020) (Emergency Order).

Law Judge direct all other Parties to file an Answer to this Motion within ten days of the date it was served in order to resolve the motion expeditiously.

The OCA further notes that the schedule in this case will likely be set in early June, as the prehearing conference is scheduled for June 4, 2020. The OCA submits that the COVID-19 global pandemic is the type of extraordinary event that, despite the OCA's best efforts, warrants an extension of the statutory period in the interest of due process.

II. PROCEDURAL HISTORY

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency in response to COVID-19. The Proclamation of Disaster Emergency recognized that the statutes and regulations that govern procedures for Commonwealth agency business may be suspended if strict compliance “would in any way prevent, hinder, or delay necessary action in coping with this emergency.”² On April 29, 2020, PAWC filed a water base rate case and a wastewater base rate case.

Through its base rate filings, PAWC seeks Commission approval to increase water and wastewater base rates to produce additional, combined annual operating revenue of \$92.4 million for 2021 and \$46.2 million for 2022. The Company proposed that new rates take effect on June 28, 2020, anticipating suspension by the Commission for up to an additional seven months, pursuant to 66 Pa. C.S. § 1308(d).³ Under the Commission's suspension orders, new rates will now take effect on January 28, 2021.

² Commonwealth of Pennsylvania, Office of the Governor, Proclamation of Disaster Emergency (Mar. 6, 2020), available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (Proclamation of Disaster Emergency).

³ See PAWC filing, Vol. I, Tab 2 (Statement of Reasons).

PAWC is an investor-owned water and wastewater utility serving customers in 36 counties throughout the Commonwealth of Pennsylvania. PAWC provides water service to approximately 665,829 customers in portions of Adams, Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Cumberland, Dauphin, Fayette, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lebanon, Luzerne, McKean, Monroe, Montgomery, Northampton, Northumberland, Pike, Schuylkill, Susquehanna, Union, Warren, Washington, Wayne, Wyoming, and York Counties. The Company also provides wastewater service to approximately 74,354 customers in portions of Adams, Allegheny, Beaver, Berks, Chester, Clarion, Cumberland, Lackawanna, McKean, Monroe, Northumberland, Pike, Washington, and York Counties.

To date, Formal Complaints, Notices of Appearance, and Petitions to Intervene were submitted by the OCA, I&E, the Office of Small Business Advocate, the Pennsylvania Utility Law Project, the Commission on Economic Opportunity, Mr. and Mrs. Jeffrey LaBarge, Mr. And Mrs. Gerald S. Lepre, Jr., and Ms. Victoria Lozinak.

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees beginning March 16, 2020, and the closing of all state offices in Dauphin County and the Capitol Complex.⁴ The Commission's offices and the OCA's office in Harrisburg remain closed and all employees are required to work from home, with limited exception. On May 21, 2020, the Commission issued orders suspending the Company's tariff supplements until January 28, 2021.

⁴ <https://www.governor.pa.gov/newsroom/gov-wolf-puts-statewide-covid-19-mitigation-efforts-in-effect-stresses-need-for-every-pennsylvanian-to-take-action-to-stop-the-spread>.

III. GROUNDS FOR REQUESTED RELIEF

A. Legal Authority

Generally, base rate increase proceedings have a nine-month statutory deadline that ensures prompt investigation and review of the filing.⁵ The Public Utility Code further provides that Presiding Officers shall have the authority, subject to the Commission's Regulations, to regulate the course of the hearing, dispose of procedural requests or similar matters, and take any other action authorized by Commission rule.⁶

PAWC filed its complex base rate cases, involving multi-year rate plans under recently enacted legislation,⁷ a novel regionalization and consolidation surcharge, and a pension tracker⁸, on April 29, 2020, which is approximately one month after the Commission issued its Emergency Order and Governor Wolf issued a Proclamation of Disaster Emergency.

As noted *supra*, Governor Wolf determined that, due to the global pandemic's impact upon operations, statutes and regulations that govern procedures for Commonwealth business may need to be altered or waived.⁹ Moreover, the Commission noted in its Emergency Order that the closure of the Commission's office "presents many challenges for the Commission, the regulated community, and the public."¹⁰ The Emergency Order further stated as follows:

Given the unprecedented nature of this emergency, the Commission is aware that some deadlines or obligations may hinder the public service mission of the Commission and its affected stakeholders.¹¹

⁵ See 66 Pa. C.S. § 1308(d).

⁶ 66 Pa. C.S. § 331(d).

⁷ Act 58 of 2018, codified at 66 Pa. C.S. § 1330(b).

⁸ See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

⁹ Proclamation of Disaster Emergency at 2.

¹⁰ Emergency Order at 1.

¹¹ Emergency Order at 2.

As further noted in the Commission's Emergency Order, statutory deadlines prescribed by the Public Utility Code or applicable law may be waived, suspended, or extended. The Emergency Order states as follows:

Suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines shall not exceed ninety (90) days except upon expedited certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.

For example, in pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief Administrative Law Judge's decision would then be subject to review by the Commission. Similarly, in uncontested proceedings, e.g. the filing of an annual universal service report, the utility may request an extension of time to file the report. The Bureau Director is hereby authorized to grant a reasonable extension of time for the filing of that report subject to review by the Commission.¹²

As such, in recognition of the extraordinary circumstances which arose due to the COVID-19 pandemic, the Commission ordered as follows:

All statutory and regulatory deadlines may be suspended, extended, waived or changed during the pendency of the Proclamation of Disaster Emergency.¹³

The OCA submits that the Commission's ability to suspend, extend, or waive statutory deadlines is appropriate to apply to the instant proceedings. As discussed below, the filing of a base rate case approximately one month following the issuance of the Commission's Emergency Order and in the midst of an ongoing global pandemic is reasonable basis for the Commission to grant an extension.

¹² Emergency Order at 3 (emphasis in original).

¹³ Emergency Order at 4.

B. Extension of the Statutory Suspension Period Is Necessary to Prevent a Limited Investigation and Review of PAWC's Rate Increase Filings and Uphold Due Process.

Given the current, extraordinary circumstances, the statutory suspension period will limit the ability of the OCA, and the other parties, to adequately investigate and analyze the Company's filings and will likely prevent public input hearings from being convened in a timely manner, thus preventing the development of a full and complete record.

Due to the ongoing COVID-19 pandemic, the OCA's office personnel are working remotely. Accordingly, the OCA does not have its usual access to physical files, photocopying, U.S. mail, and support staff, among other services. As such, the COVID-19 pandemic impairs the OCA's ability to investigate PAWC's filing.

This proceeding further presents some particular challenges. PAWC's rate increase filing is complex and includes proposals for multiyear rate increases under recently enacted legislation,¹⁴ a novel regionalization and consolidation surcharge, and a pension tracker.¹⁵ Moreover, the Company proposes to increase water and wastewater rates by \$92.4 million, or 12.9%, in the first year of new rates, and an additional \$46.2 million, or 5.8%, in the second year.¹⁶ Given the financial and economic impact of COVID-19 on PAWC ratepayers, the OCA submits that it is particularly important to ensure that rates established in this proceeding are just and reasonable. The OCA further submits that projections contained in PAWC's base rate case filings may no longer be reasonable given the changed circumstances which are arising as a result of the COVID-19 pandemic. Providing additional time to analyze these issues will be critical going forward.

¹⁴ Act 58 of 2018, codified at 66 Pa. C.S. § 1330(b).

¹⁵ See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

¹⁶ See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

Moreover, given the size of the proposed rate increases and the number of customers affected, the OCA anticipates requesting that public input hearings be scheduled to provide customers the opportunity to speak on the record about how this rate increase will impact them and any quality of service issues. This is particularly critical during this time as many customers will be experiencing financial hardship for an extended period of time and the Company's request will impact them significantly.

For these reasons, the OCA submits that the statutory suspension period should be extended to provide additional time for the parties to analyze the Company's filing and sufficient opportunity for customers to provide comments.

IV. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission grant the OCA's Expedited Motion for an Extension of the Statutory Suspension Period of PAWC's Base Rate Proceedings and extend the suspension period by forty-five (45) days. This suspension is necessary to meet the mounting challenges resulting from the COVID-19 pandemic. It will also ensure that the OCA has sufficient time and resources to adequately investigate and support its position in this proceeding and develop a full and complete record for the Commission's consideration.

Respectfully submitted,

/s/ Harrison W. Breitman
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Dated: May 28, 2020
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3019369 (Water)
v.	:	C-2020-3019751
Pennsylvania-American Water Company	:	R-2020-3019371 (Wastewater)
	:	C-2020-3019754

VERIFICATION

I, Harrison W. Breitman, Assistant Consumer Advocate of the Office of Consumer Advocate, hereby state that the facts above set forth above 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: May 28, 2020
*289109

Signature: /s/ Harrison W. Breitman
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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3019369 (Water)
v.	:	C-2020-3019751
Pennsylvania-American Water Company	:	R-2020-3019371 (Wastewater)
	:	C-2020-3019754

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Notice to Plead and Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania American Water Company's Base Rate Proceedings, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 28th day of May 2020.

SERVICE BY E-MAIL ONLY

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