



COMMONWEALTH OF PENNSYLVANIA

June 3, 2020

E-FILED

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), R-2020-3019371 (Wastewater)**

Dear Secretary Chiavetta:

Enclosed for filing please find the Prehearing Memorandum, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding. I respectfully request that a copy of any documents filed in this case also be shared with our witness at the address below:

Mr. Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720
St. Louis, MO 63105
314-725-2511
excel.consulting@sbcglobal.net

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

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

Sincerely,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	Docket Nos.
Commission	:	R-2020-3019369 (Water)
Office of Consumer Advocate	:	C-2020-3019751
Office of Small Business Advocate	:	C-2020-3019767
Jessica and Jeffrey Labarge	:	C-2020-3019627
Mr. and Mrs. Gerald S. Lepre, Jr.	:	C-2020-3019646
Victoria Lozinak	:	C-2020-3019778

v.

Pennsylvania-American Water Company

Pennsylvania Public Utility Commission	:	R-2020-3019371 (Wastewater)
Office of Consumer Advocate	:	C-2020-3019754
Office of Small Business Advocate	:	C-2020-3019772
Jessica and Jeffrey Labarge	:	C-2020-3019627
Mr. and Mrs. Gerald S. Lepre, Jr.	:	C-2020-3019646
Victoria Lozinak	:	C-2020-3019778

v.

Pennsylvania-American Water Company

**OFFICE OF SMALL BUSINESS ADVOCATE
PREHEARING MEMORANDUM**

I. INTRODUCTION

The Office of Small Business Advocate (“OSBA”) is authorized to represent the interests of small business customers of utility services before the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50 (“the Act”). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this

proceeding. Representing the OSBA in this matter are Assistant Small Business Advocate Erin K. Fure and Assistant Small Business Advocate Daniel G. Asmus. Please address all correspondence in this matter as follows:

Erin K. Fure
Daniel G. Asmus
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)
efure@pa.gov
dasmus@pa.gov

II. FILING BACKGROUND

On April 29, 2020, Pennsylvania-American Water Company (“PAWC” or the “Company”) filed Supplement No. 19 to Tariff Water-- PA P.U.C. No. 5 and Supplement No. 19 to Tariff Wastewater-- PA P.U.C. No. 16 to become effective on June 28, 2020. PAWC’s tariff filings seek approval of rates and rate changes which would increase total annual operating revenues of the Company by \$138.6 million over two years (\$92.4 million in 2021 and \$46.2 million in 2022).

On April 29, 2020, Jessica and Jeffrey Labarge filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019627). On April 30, 2020, Mr. and Mrs. Gerald S. Lepre, Jr. filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019646).

On May 1, 2020, State Representative Austin Davis filed a letter in opposition to PAWC’s filings. On May 5, 2020, State Senator Judith L. Schwank filed a letter in opposition to PAWC’s filings. On May 7, 2020, the Office of Consumer Advocate (“OCA”) filed its Notice of Appearance and Formal Complaint (docketed at Nos. C-2020-3019751 and C-2020-3019754). The Commission’s Bureau of Investigation and Enforcement also filed its Notice of Appearance

on May 7, 2020.

On May 11, 2020, the OSBA filed its Notices of Appearance and Formal Complaint (docketed at Nos. C-2020-3019767 and C-2020-3019772). On May 12, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene. On May 12, 2020, Victoria Lozinak filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019778). The Commission on Economic Opportunity (“CEO”) filed a Petition to Intervene on May 18, 2020.

By Order entered May 21, 2020, the proposed Supplement No. 19 to Tariff Water-- PA P.U.C. No. 5 and Supplement No. 19 to Tariff Wastewater-- PA P.U.C. No. 16 were suspended by operation of law until January 28, 2021. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 19 to Tariff Water-- PA P.U.C. No. 5 and Supplement No. 19 to Tariff Wastewater-- PA P.U.C. No. 16.

A Pre-Hearing Conference Order and Notice were issued on May 22, 2020 scheduling a telephonic pre-hearing conference in this matter for June 4, 2020 before Administrative Law Judge (“ALJ”) Conrad A. Johnson.

On May 28, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company’s Base Rate Proceedings. On June 1, 2020 CAUSE-PA filed an Answer in Support of the OCA’s motion.

On June 2, 2020, AK Steel Corporation (“AK Steel”) filed a Notice of Appearance, Petition to Intervene, and Motion for Admission Pro Hac Vice.

III. IDENTIFICATION OF WITNESSES AND TENTATIVE ISSUES

Assisting in the development and presentation of the OSBA's case in this proceeding will be:

Mr. Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105
(314) 725-2511
excel.consulting@sbcglobal.net

The OSBA will participate in the case to assure that the interests of small business customers of PAWC are adequately represented and protected.

As appropriate and necessary, the OSBA will investigate and analyze the claims and proposals of the Company and other parties through cross-examination of witnesses appearing for those parties and through briefing. The OSBA will particularly focus on any issue where the impact on the interests of the small business consumers would be unjustifiably different than or disproportionate to the impact on another class of customers, or otherwise lacking in reasonableness or basic fairness.

After an initial review of the materials submitted by PAWC, the OSBA has identified the following issues:

1. Whether the methodology used in PAWC's water cost-of-service allocation studies (WCOSs) is appropriate;
2. Whether the Company's proposed Year 1 & 2 class revenue allocations for water service customers are cost based;

3. Whether PAWC's proposed Year 1 & 2 water increases to non-Rate Zone 1 rate areas are reasonable and appropriate;
4. Whether the Company's proposal to recover \$32.9 million of its claimed Year 1 wastewater revenue requirement from water service customers is consistent with Act 11;
5. Whether PAWC's proposed methodology for allocating \$32.9 million of its claimed Year 1 wastewater revenue requirement among its water service classes is cost based;
6. Whether the Company's proposal to recover an additional \$2.3 million of its claimed Year 2 wastewater revenue requirement from water service customers is consistent with Act 11;
7. Whether the methodology used in the Company's wastewater cost-of-service allocation studies (WWCOSSs) is appropriate;
8. Whether the Company's proposed Year 1 & 2 class revenue allocations for wastewater service customers are cost based;
9. Whether PAWC's proposed Year 1 & 2 wastewater increases to non-Rate Zone 1 rate areas are reasonable and appropriate;
10. Whether PAWC's requested return on equity of 10.80% is excessive;
11. Whether the Company's proposed Regionalization and Consolidation Surcharge is reasonable and/or necessary; and
12. Whether PAWC's proposed Pension and OPEB tracker is reasonable and/or necessary.

The OSBA reserves the right to pursue additional issues after reviewing the testimony of the parties and as issues arise throughout the proceeding.

IV. DISCOVERY

Discovery is ongoing. The OSBA will work with the Presiding Officers and the other parties to develop any mutually acceptable discovery modifications.

V. SERVICE OF DOCUMENTS

In accordance with 52 Pa. Code § 1.54(b)(3)(i), the OSBA agrees to accept electronic mail delivery of documents on the due date¹ as satisfying the in-hand requirement, provided that such documents are followed by hard copy delivery to OSBA. Hard copy delivery may be accomplished by first class mail, by personal hand delivery, or by overnight courier.² Service by electronic mail only is not sufficient. The OSBA requests that such hard copies are also provided to its witnesses identified above.

In addition to hard copies of pleadings, briefs, and exceptions, the OSBA requests hard copies of responses to discovery propounded by the OSBA or any other party. The OSBA also requests that all parties serve an electronic copy of all interrogatory responses upon the OSBA and the OSBA witnesses identified above.

VI. SETTLEMENT

The OSBA notes its willingness to enter into settlement discussions at the appropriate phase of this proceeding.

¹ In accordance with 52 Pa. Code § 1.56(a)(5), documents must be received by 4:30 pm.

² See 52 Pa. Code §§ 1.54(b)(1), 1.54(b)(2), and 1.56(a)(2). Regarding the *perfection of service*, the OSBA respectfully submits that 52 Pa. Code § 1.56(a)(2), as currently written, does not satisfy the requirements of due process.

VII. HEARING AND BRIEFING SCHEDULE

The OSBA will continue to cooperate with other parties to develop a mutually acceptable procedural schedule.

Respectfully submitted,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID # 312245

Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: June 3, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Christine M. Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, Esq.
Harrison W. Breitman, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101
CHoover@paoca.org
EGannon@paoca.org
LGuerra@paoca.org
hbreitman@paoca.org

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
carwright@pa.gov
(*Counsel for BIE*)

Susan Simms Marsh, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
susan.marsh@amwater.com
(*Counsel for PAWC*)

Gerald S. Lepre, Jr.
3623 California Avenue
Pittsburgh, PA 15212
leprejrlaw@gmail.com

Richard A. Baudino
J. Kennedy & Associates
1347 Frye Road
Westfield, NC 27053
rbaudino@jkenn.com

The Honorable Conrad A. Johnson
Administrative Law Judge
Pennsylvania Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
cojohnson@pa.gov

Victoria Lozinak
609 Waterfall Way
Phoenixville, PA 19460
(First Class Mail Only)

Joseph L Vullo, Esquire
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jvullo@bvrrlaw.com

David F. Boehm, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com

Ria M. Pereira
John W. Sweet
Elizabeth R. Marx
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Judith L Schwank, Senator
Senate of Pennsylvania - 11th district
Senate box 203011
Harrisburg, PA 17120
(First Class Mail Only)

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurz@BKLLawfirm.com
kboehm@BKLLawfirm.com
jkylercohn@BKLLawfirm.com

Jessica and Jeffrey LaBarge
123 Fairmount Avenue
Reading, PA 19606
jessi@russolawllc.com

Rep Austin Davis
G-07 Irvis Office Building
Po Box 202035
Harrisburg Pa 17120-2035
(First Class Mail Only)

Kenneth M. Kulak, Esq.
Anthony C. Decusatis, Esq.
Brooke E. McGlinn, Esq.
Mark A. Lazaroff, Esq.
Morgan Lewis & Bockius, LLP
1701 Market Street,
Philadelphia, PA 19103
ken.kulak@morganlewis.com
anthony.decusatis@morganlewis.com
brooke.mcglinn@morganlewis.com
mark.lazaroff@morganlewis.com

David P. Zambito, Esq.
Cozen O'Connor
17 North Second St Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com

DATE: June 3, 2020

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245