



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 4, 2020

Via Electronic Filing

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) and R-2020-3019371 (Wastewater)
I&E Answer to Motion

Dear Secretary Chiavetta:

Enclosed please find the **Answer of the Bureau of Investigation and Enforcement in Support of 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** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic Service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Prosecutor
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CBW/ac
Enclosures

cc: Honorable Conrad A. Johnson (OALJ, PUC Pittsburgh – via email only)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT IN
SUPPORT OF 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

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) pursuant to 52 Pa. Code §§ 5.61-5.63, hereby files this Answer in Support of the Expedited Motion of the Office of Consumer Advocate for an Extension of the Statutory Suspension Period of Pennsylvania American Water Company’s Base Rate Proceedings.

As explained in more detail below, pursuant to the authority issued in both Governor Tom Wolf’s Proclamation of Disaster Emergency due to COVID-19 (“coronavirus”), and the Commission’s Emergency Order¹ dated March 20, 2020 related to suspension of statutory and regulatory deadlines, I&E believes that the schedule for the above-referenced Pennsylvania American Water Company (“PAWC” or “Company”)

¹ *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, EMERGENCY ORDER*, Docket No. M-2020-3019262 (dated March 20, 2020, ratified March 26, 2020).

base rate case should be extended. Without the requested relief, severe and irreparable harm would occur to I&E, as well as potentially both PAWC and its ratepayers.

In support of the OCA this Motion, I&E states the following:

II. PROCEDURAL HISTORY

I&E accepts the Procedural History as set forth in the OCA Motion and, hereby, incorporates it in this Answer.

III. ANSWER

I&E supports OCA's Motion to Extend the Statutory Suspension Period.

Extension of the suspension period is essential to provide sufficient time to fully and completely review the Company's rate request and, thus, for I&E's to fulfill its mission to represent the public interest in rate proceedings. I&E's ability to fully and completely investigate the Company's requested base rate increase is necessary to establish a full and complete record before the ALJs and for the Commission.

A. Impact of the Commission's Closure

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, ("Governor Wolf") issued a Proclamation of Disaster Emergency² wherein it states: "WHEREAS, a novel coronavirus (now known as "COVID-19") emerged in Wuhan, China, began affecting humans in December 2019, and has since spread to 89 countries, including the United states" The Proclamation further states: "... NOW THEREFORE, pursuant to the provisions of Subsection 7301(c) of the Emergency

² Proclamation of Disaster Emergency (March 6, 2020) <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

Management Services Code, 35 Pa. C.S. § 7101, *et seq*, I do hereby proclaim the existence of a disaster emergency throughout the Commonwealth.” This Proclamation is in effect for up to ninety (90) days unless the governor acts to extend it further.

Additionally, the Proclamation states: “FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance, with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.”

On March 15, 2020, Governor Wolf, through the Deputy Secretary for Human Resources and Management, issued an Executive Order implementing telework protocol for at least 14 days beginning March 16, 2020, and the closing of all state offices in Dauphin County and the Capitol Complex. As a result, the Commission’s offices, including I&E’s offices were closed. The Executive Order instituted the state’s telework protocol for the foreseeable future. As of the filing of this Answer, the Commission is still working under a telework protocol.

Base rate cases generally operate on a nine-month statutory time frame under 66 Pa. C.S. §1308. If for some reason, the Commission were unable to render a decision within that time frame, Section 1308 provides that the rate increase would go into effect at the end of the statutory period as the rates were filed, subject to refund plus interest for amounts that are later deemed not to be just and reasonable. However, On March 20, 2020, the Commission issued an Emergency Order at Docket No. M-2020-3019262, that provided for the suspension, extension, or waiver of statutory or regulatory deadlines

where necessary during the course of the Governor's Proclamation of Disaster Emergency.³ The Emergency Order states "...in pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the position of the parties and the presiding Administrative Law Judge." Your Honor has the authority pursuant to 66 Pa. C.S. § 331(d) regarding the authority of the presiding officer to: (d)(4) regulate the course of the hearing; (d)(7) dispose of procedural requests or similar matters; and (d)(9) take any other action authorized by commission rule. *See also* 52 Pa. Code § 5.483.

Based, on both the authority given to Your Honors by the Public Utility Code, and the guidance provided by the Commission's Emergency Order, I&E submits Your Honor has the authority to extend the statutory suspension period in this proceeding from the January 14, 2021 public meeting date to some later date.

The closing of Commission offices has rendered it difficult for I&E, as a statutory party in this base rate proceeding, to investigate and analyze the requested base rate increase within the statutory nine-month time period. In the March 20 Emergency Order issued by the Commission, the Commission correctly noted that the closure of Commission offices presents "many challenges for the Commission, the regulated community, and the public." The Emergency Order further explained that while the Commission and the regulated community "operate under reasonable statutory and regulatory deadlines necessary to ensure timely administration of the Public Utility

³ *See also*, 35 Pa. C.S. § 7301(f)(1).

Code,” the Commission is cognizant that some deadlines may, at this juncture, hinder the public service mission of the Commission and its stakeholders.

Therefore, while the Emergency Order encourages parties before the Commission to cooperate regarding the suspension, extension, waiver, or change or regulatory, statutory or procedural deadlines, it also, however, noted that all statutory, regulatory or procedural deadlines prescribed by the Public Utility Code or applicable law may be extended, waived or changed as a result of the Governor’s Proclamation of Disaster Emergency. Importantly, no stakeholders have filed a Petition for Reconsideration, or Clarification challenging the Commission’s authority to alter statutory and regulatory deadlines in this manner.

There are “telework” and work from home provisions in place for Commission employees, and I&E employees are willing and able to review and analyze the Company’s rate increase data from home. However, certain aspects of I&E’s review of this filing have been impacted due to these new and unprecedented working conditions.

An example is that I&E designates rate case teams where in-person meetings with technical supervisors, attorneys and all expert witnesses are routinely held and informal discussions with team members occur often. Given the current pandemic, those in-person meetings and informal discussions among team members about various issues can no longer occur. To be clear, I&E teams have been actively communicating via email and conference calls during this period of teleworking; however, the new process has impacted the flow of information among members of the rate case team.

Lastly, as of the drafting of this Answer, three base rate case procedural schedules have been impacted as a result of the coronavirus emergency.⁴ Specifically, the UGI Utilities Inc. – Gas Division (“UGI”) base rate case⁵, Pittsburgh Water and Sewer Authority (“PWSA”) base rate case⁶ and Philadelphia Gas Works (“PGW”) base rate case⁷ procedural schedules have been extended due to the ongoing pandemic. Due to these extensions, PAWC’s statutory suspension is now in line with these earlier filed base rate cases and slated to be on a similar procedural schedule.

As I&E works exclusively with its internal technical witnesses, some witness overlap is to be expected as there are currently five current pending base rate cases before this Commission. An extension of the statutory nine (9) month timeline ensures the same witness will not be expected to prepare for multiple hearings on different cases in a short period of time. In order to ensure all cases receive proper I&E review, it is important that this case receive the requested extension so that the procedural schedules will not overlap and each rate case receive the examination it’s entitled.

More importantly, as “telework” continues, I&E seeks to avoid placing an overwhelming burden on its support staff. It is an undertaking to process all documents associated with a rate case under normal circumstances at I&E’s physical location let alone under these emergency conditions. An extension would avoid the potential of

⁴ As of the drafting of this Answer, a Motion to Extend the Procedural Schedule was also pending in the Columbia Gas Base Rate Proceeding at Docket No. R-2020-3018835.

⁵ Docket No. R-2019-3015162.

⁶ Docket No. R-2020-3017951.

⁷ Docket No. R-2020-3017206.

coinciding due dates with the existing four base rate cases to alleviate the administrative burden given the circumstances of this emergency situation.

B. Potential Impact on Customers

Governor Wolf's determination that all non-essential business in the Commonwealth be temporarily suspended has presented other issues that must be reviewed carefully in the context of this base rate proceeding.

For one, it is unclear whether the parties would be able to timely schedule public input hearings in this proceeding while this Emergency Closure continues. As a utility rate increase such as this involves a substantial property right,⁸ the public's right to due process is paramount. Public input hearings are a vital part of the rate case process and effort must be taken to ensure that the public has its chance to be heard. It is important for customers to be given the opportunity to voice their concerns about this rate increase especially now considering the impact coronavirus has had on the economy and employment. I&E is concerned that without the extension, customers will be unable to have an opportunity to provide meaningful public input testimony under the current emergency situation.

Another pressing matter related to the Governor's Emergency Order requiring that all non-life sustaining business close⁹ is that as a result of this Emergency Order, construction work largely ceased in the Commonwealth for a period of time. It is likely

⁸ *Joseph Horne Co. v. Pa. PUC*, 467 A.2d 1212, 78 Pa. Commw. 566, Commw. 1983, 485 A.2d 1105, 506 Pa. 475.

⁹ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are Not Life Sustaining (March 19, 2020) <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>

that the Governor's Emergency Order has slowed down PAWC's non-emergency infrastructure improvements such as the replacement of mains and the like. Careful consideration must be given to how this may impact the revenue requirement requested by PAWC as the parties will have to re-evaluate PAWC's ability to complete any construction projects in the future included as part of this filing within the fully projected future test year ("FPFTY").

Additional consideration must be given to the economic impact of this crisis as it relates to PAWC's filing as well as ratepayers are facing in some instances loss of income as a result of either temporary or permanent job loss. Specifically, low and moderate income customers who may already be struggling to afford their utility bills may be hit particularly hard as non-essential business remains largely halted. These already struggling customers are likely facing further substantial loss of income. In turn, the loss of income by these customers may serve to drive up PAWCs uncollectible expense. It will also require reexamination of PAWC's low-income programs. At this juncture, it is impossible to determine how many more customers in this service territory will be in need of rate assistance. Therefore, more time is necessary to assess the impact of the current crisis on PAWC's low and moderate income customers.

These are circumstances that could not have been taken into consideration or planned for as of the filing of PAWC's base rate case. As these circumstances have changed, not just in the minor way change always occurs during the pendency of a base rate case, but in a major, jarring way the parties to this proceeding must be afforded the

opportunity to examine the impact these changes will have on PAWC's filing and requested revenue requirement.

C. Potential Impact on PAWC

To be clear, I&E's duty to represent the public interest involves a duty not only to PAWC's customers, but also to PAWC. I&E's request for more time in this proceeding will also allow I&E to evaluate the appropriate level of cash and other financial metrics to ensure that PAWC is able to pay its bills and access capital at rates that are reasonable.


The extra time is necessary to I&E to fully explore, not only the needs of PAWC's customers, but the needs of PAWC itself as a result of this pandemic. The global financial situation is markedly different than it was when PAWC filed its base rate case. It is imperative that PAWC have access to capital at reasonable rates. These factors are potentially impacted by the current disruption of day-to-day business in the Commonwealth. It is important that PAWC continue to be able to operate safely and reliably. The extra time requested by I&E will allow for sufficient review of what level of revenue PAWC needs to continue safe and reliable operations.

IV. CONCLUSION

I&E's believes OCA's request for an extension of the suspension period to in this proceeding is reasonable. It will provide sufficient time to fully and completely review the Company's rate request and thus fulfill I&E's mission to represent the public interest in rate proceedings. I&E's ability to fully and completely investigate the Company's requested base rate increase is necessary to establish a full and complete record before the ALJs and for the Commission.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that Chief Administrative Law Judge Charles Rainey and Administrative Law Judge Conrad Johnson issue an Order extending the statutory deadline for this proceeding and to order the parties to establish a procedural schedule taking into account the extension of the statutory deadlines.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

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Pennsylvania Public Utility Commission
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Dated: June 4, 2020

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to Motion** dated June 4, 2020, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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A handwritten signature in grey ink that reads "Carrie B. Wright". The signature is written in a cursive, flowing style. The "Wright" part is more legible than the first name, which appears to be "Carrie". There is a small mark at the end of the signature that looks like a stylized "X" or a flourish.

Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185