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June 24, 2020

VIA eFILING

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 and R-2020-3019371**

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matters is the **Petition of Pennsylvania-American Water Company for Reconsideration of Staff Action (the "Petition")**. Copies of the Petition have been served in accordance with the enclosed Certificate of Service.

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

Very truly yours,



Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	Docket No. R-2020-3019369
	:	Docket No. R-2020-3019371
	:	
v.	:	
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Petition of Pennsylvania-American Water Company for Reconsideration of Staff Action** in the above-referenced proceedings, 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: June 24, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

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**DOCKET NOS. R-2020-3019369
R-2020-3019371**

**PETITION OF PENNSYLVANIA-AMERICAN WATER COMPANY
FOR RECONSIDERATION OF STAFF ACTION**

I. INTRODUCTION

In accordance with 52 Pa. Code §§ 1.31 and 5.44, Pennsylvania-American Water Company (“PAWC” or the “Company”) petitions the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) for reconsideration of the decision of Chief Administrative Law Judge Charles E. Rainey (“CALJ”) issued on June 4, 2020, pursuant to delegated authority (the “CALJ Order”).¹ The CALJ Order granted the Office of Consumer Advocate’s (“OCA”) Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania American Water Company’s Base Rate Proceedings (“OCA Motion”). The OCA Motion sought a forty-five day extension of the statutory suspension period “to meet the mounting challenges resulting from the COVID-19 pandemic.” Copies of the CALJ Order and the OCA Motion are attached as Appendices A and B to this Petition.

The Motion was addressed in oral argument at the Prehearing Conference held on June 4, 2020, before the presiding Administrative Law Judge, Conrad A. Johnson (“ALJ”), and the

¹ See *Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Emergency Order, M-2020-3019262 (Mar. 20, 2020), p. 2 (“Emergency Order”) (“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.”)

CALJ. At the Prehearing Conference, PAWC: (1) opposed the OCA Motion; (2) offered an alternative that would add three weeks to the litigation schedule by voluntarily extending the suspension period from January 28 to February 4, 2021, provided that, if a settlement were achieved, the settlement rates could become effective before February 4, 2021;² and (3) explained that, if an extension beyond February 4, 2021 were granted, the rates finally approved by the Commission must be effective as of the end of the suspension period and the portion of the revenue increase not billed from the effective date through the end of the extended suspension period should be recovered by a recoupment surcharge. The OCA rejected the Company's offer to voluntarily extend the suspension period to February 4, 2021, insisted that a minimum 45-day schedule extension was needed, and argued that the Commission was empowered to unilaterally waive the statutory mandate of Section 1308(d), 66 Pa.C.S. § 1308(d), and refuse to permit finally-adjudicated rates to be effective as of the end of the suspension period.

The CALJ Order granted the OCA Motion over PAWC's objection and without providing for the finally-approved rates to be billed as of the end of the Section 1308(d) suspension period. The CALJ Order also provides that "[a]ny party dissatisfied with my resolution of this matter may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order." Pursuant to 52 Pa. Code § 5.44(a) and the CALJ Order, PAWC hereby petitions for reconsideration of that Order and requests that the Commission find and determine as follows:

² The Commission's public meetings are scheduled for January 14 and February 4, 2021. Under 66 Pa.C.S. § 1308(d), the suspension period of the Company's rate filing ends on January 28, 2021. The Company's offer to voluntarily extend the suspension period to February 4, 2021 would extend the procedural schedule by 20 days (January 14 to February 4, 2021).

(1) The seven-month suspension period set forth in Section 1308(d) protects the substantive rights of public utilities; cannot be waived or extended except with the consent of the affected utility; and was not suspended or overridden by the Proclamation of Disaster Emergency issued by Governor Tom Wolf on March 6, 2020 pursuant to Section 7301(c) of the Emergency Management Services Code, 35 Pa.C.S. §§ 7101, *et seq.* (“Executive Order”).

(2) The exigencies created by the COVID-19 pandemic requiring use of remote working environments and other precautions to avoid spreading the disease can be addressed by reasonable scheduling and procedural accommodations that do not require violating the statutory mandate that a utility is entitled to charge either finally-adjudicated rates or its proposed rates (subject to refund) as of the end of the Section 1308(d) suspension period.

(3) PAWC’s proposal to voluntarily extend the suspension period to February 4, 2021 is reasonable and provides for a procedural schedule with sufficient time to address the issues in this case and develop the record for the ALJ’s and the Commission’s consideration.

(4) If the Commission determines that the procedural schedule should be extended beyond February 4, 2021, it should acknowledge that the Company is entitled to charge the rates established in this proceeding from and after the end of the seven-month suspension period mandated by Section 1308(d) and authorize the Company to implement an appropriate surcharge to recoup the revenues lost between the end of the suspension period and the implementation of new rates, which is the procedure expressly approved by the Commonwealth Court in *Bell Tel. Co. v. Pa. P.U.C.*³ and employed by the Commission in other cases in the past, as explained in Section III.D., *infra*.

In support of reconsideration of the CALJ Order and the relief requested in this Petition, PAWC states as follows:

³ 452 A.2d 86 (Pa. Cmwlth. 1982), *aff’d per curiam*, 482 A.2d 1272 (Pa. 1984).

II. BACKGROUND

1. On March 6, 2020, Governor Wolf issued the Executive Order, which provides in pertinent part:

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. Commonwealth agencies may implement emergency assignments without regard to procedures required by other laws, except mandatory constitutional requirements, pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds.

2. On March 15, 2020, Pennsylvania's Deputy Secretary for Human Resources and Management issued an Executive Order implementing protocols for remote telework for state offices in Dauphin County and the Capital Complex, including the Commission's offices for a period of at least fourteen days, beginning March 16, 2020. On March 16, 2020, the Governor's office issued an order closing all businesses that are not life sustaining.

3. On March 20, 2020, the Commission issued the Emergency Order to furnish guidance on the conduct of Commission proceedings during the pendency of the COVID-19 emergency. Additionally, as part of its response to the Executive Order, the Commission adopted broader electronic filing practices and ceased paper service on the Commission or by the Commission on others for the duration of the emergency.

4. On March 30, 2020, PAWC filed with the Commission its Notice of Intent to file a general rate increase by April 29, 2020. The Commission assigned the above-referenced docket numbers to this case. As evidenced by the filing of its Notice of Intent, PAWC had been working on the development of the extensive supporting data for its proposed rate increase for a

considerable time prior to the issuance of the Executive Order and the Emergency Order. PAWC had last filed for a general rate increase on April 28, 2017.

5. On April 29, 2020, the Company filed Supplement No. 19 to Original Tariff Water – Pa. P.U.C. No. 5 (“Water Tariff Supplement”) and Supplement No. 19 to Original Tariff Wastewater – Pa. P.U.C. No. 16 (“Wastewater Tariff Supplement”) requesting an increase in its total annual operating revenues to become effective June 28, 2020. Pursuant to the authority granted by 66 Pa.C.S. § 1330, the Company is seeking an increase in water and wastewater rates totaling \$138.6 million over two years: \$92.4 million, annualized over the entire year 2021, and \$46.2 million in 2022.

6. By Orders entered May 21, 2020, the Commission instituted a formal investigation at Docket Nos. R-2020-3019369 (Water) and R-2020-3019371 (Wastewater) to determine the lawfulness, justness and reasonableness of the Company’s existing and proposed rates, rules and regulations. Accordingly, the Water Tariff Supplement and Wastewater Tariff Supplement were suspended by operation of law until January 28, 2021, unless permitted by Commission order to become effective at an earlier date.

7. Beginning on April 29, 2020 Complaints and Petitions to Intervene were filed by various parties including the OCA and the Office of Small Business Advocate (“OSBA”), and the Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. A list of the parties that filed pleadings in this case is set forth in the Prehearing Order issued by the ALJ on June 15, 2020.

8. On May 22, 2020, the Commission issued a Notice that a telephonic Prehearing Conference would be held on June 4, 2020. Also on May 22, 2020, the ALJ issued a Prehearing

Conference Order directing the parties to submit their respective Prehearing Memoranda by June 3, 2020.

9. On May 28, 2020, the OCA filed the OCA Motion. The OCA invoked the Executive Order and the Emergency Order as the basis for seeking a 45-day extension of the suspension period in this case. The ALJ advised the parties that the Motion would be addressed at the Prehearing Conference. Answers supporting the OCA's Motion were filed by I&E and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA").

10. On May 29, 2020, the stay-at-home order was lifted in Dauphin County, Pennsylvania, and the County began the reopening "yellow" phase under Governor Wolf's program that has allowed counties to begin reopening businesses and government locations in an incremental manner under the Red-Yellow-Green designations.

11. The Prehearing Conference was held on June 4, 2020. The CALJ was in attendance for purposes of hearing oral argument on the OCA Motion. Following presentations by the OCA, PAWC and other parties, the CALJ, after consultation with the ALJ, orally granted the OCA Motion and indicated a written order would follow. The CALJ Order was issued and served on June 4, 2020.⁴

⁴ At the Prehearing Conference, Docket Nos. R-2020-3019369 and R-2020-3019371 and all complaints were consolidated for further proceedings and resolution.

III. RECONSIDERATION SHOULD BE GRANTED TO CORRECT THE ERRORS OF LAW MADE BY THE CALJ ORDER

A. The Seven Month Suspension Period Mandated By Section 1308(d) Protects Substantive Rights Of Utilities And Cannot Be Unilaterally Waived Or Extended By The Commission

12. Section 1308(d) provides that whenever a utility files a tariff containing rates that constitute a general rate increase,⁵ the Commission, after notice and hearing, may vote to issue an order allowing the tariff to become effective. However, absent such an order, “such tariff shall be suspended for a period not to exceed seven months from the time such rate would otherwise become effective.” Section 1307(d) further provides:

Before the expiration of such seven-month period, a majority of the members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefor, granting or denying, in whole or in part, the general rate increase requested. *If, however, such an order has not been made at the expiration of such seven-month period, the proposed general rate increase shall go into effect at the end of such period, but the commission may by order require the interested public utility to refund, in accordance with section 1312 (relating to refunds), to the persons in whose behalf such amounts were paid, such portion of such increased rates as by its decision shall be found not justified, plus interest . . . during the period or periods for which the commission orders refunds. The rate in force when the tariff stating such new rate was filed shall continue in force during the period of suspension unless the commission shall grant extraordinary rate relief as prescribed in subsection (e).*

13. In *Bell Tel. Co., supra*, at 89-91, the Commonwealth Court held that the Commission’s attempt to extend the suspension period in a manner that would prevent a utility from charging rates determined by the Commission to be just and reasonable as of the end of the statutory suspension period violated *both* Section 1308(d) *and* fundamental constitutional principles.

⁵ A “general rate increase” exceeds 3% of a utility’s gross annual intrastate operating revenues and affects more than 5% of its customers. PAWC filed for a general rate increase.

14. In *Bell Tel. Co.*, the Commission issued a final order on April 24, 1981 (the end of the statutory suspension period plus a one-day extension to which the utility had acquiesced) and directed the utility to file tariffs that complied with the findings and conclusions in the final order. The utility filed compliance tariffs on May 15, 1981, bearing an effective date of April 24, 1981. On June 5, 1981, the Commission entered an order directing the company to file revised compliance tariffs effective for service rendered on and after May 15, 1981 – three weeks after the end of the statutory suspension period. The Commission did not authorize any provision to allow the utility to recover the revenue lost by not charging the Commission-approved rates between April 24 and May 15, 1981, which the utility estimated to be \$7 million.

15. The Commonwealth Court directed the PUC to modify its order “to provide that the rates therein approved shall be effective for service rendered on or after April 24, 1981.” *Id.* at 91.

16. In support of its holding, the Court determined that, under Section 1308(d), “the requested general rate increase may be suspended for no more than seven months after the sixty day initial period for Commission review” and the Commission must enter a final order “before the close of the suspension period to avoid the *automatic* implementation of the proposed increase.” *Id.* at 89 (emphasis added). The Court further determined that simply entering a final order by the end of the suspension period without allowing the utility to recover the increased revenues that the approved rates would produce violated the terms of Section 1308(d). *Id.* at 91. Finally, and significantly, the Court found that denying a utility the right to implement rates found to be just and reasonable as of the end of the statutory suspension period violated a constitutionally-protected property right of the utility:

In fact, the familiar practice of the Commission has been to approve the rate increase requests of utilities as to amount and then to leave to the utility the laborious and mechanical task of

allocating the approved increase among the various classes of consumers. . . . Delegation of this translational task to the utility, however, cannot alter the effect of the Commission's accompanying determination that, *as of the date of the order approving the increase, the existing revenues are insufficient and, therefore, unconstitutionally confiscatory*. In short there is no warrant in the Code for delay in the receipt of rate relief following the Commission's determination in the instant case that as of April 24, 1981, Bell's existing rates fell short of that which is just and reasonable by some \$150 million. *Id.* at 90-91 (emphasis added).

17. In *Joseph Horne Co. v. Pa. P.U.C.*,⁶ the Pennsylvania Supreme Court explained its *per curiam* affirmance of *Bell Tel. Co.*, stating: "We affirmed the Commonwealth Court's holding that under Section 1308(d) the PUC may not suspend the effective date of filing of the revised tariffs when the effective date would thereby be more than nine months after the initial general rate increase filing."

18. In *Joseph Horne Co.*, the Pennsylvania Supreme Court also endorsed the Commonwealth Court's fundamental finding that the seven-month limitation on suspension of a general rate increase protects a substantive interest of utilities. After explaining that former Sections 308(b) and 310(a) had permitted the Commission to approve interim rate increases of a lesser amount while a larger requested rate increase was pending, the Court focused on the amendments to the Public Utility Code made in 1978,⁷ which, among other changes, added Sections 1308(d) and 1310 in their current form. *Id.* at 1109-1110. The amendments eliminated the "routine administrative allowance of temporary rates while general rate increases were pending." *Id.* at 1110. However, in exchange for disallowing interim rate relief, the General Assembly established a time-certain (seven months after the 60-day notice period) by which a utility would either obtain a final order establishing just and reasonable rates to become effective no later than the end of the suspension period or be permitted to implement its proposed rates

⁶ 485 A.2d 1105, 1111 n.9 (Pa. 1984).

⁷ July 1, 1978, P.L.598, No.116.

subject to refund (with interest) based on the difference between its proposed rates and the rates the Commission subsequently found to be just and reasonable. *Id.* at 1111 and n.9.⁸ The Pennsylvania Supreme Court found that the 1978 amendments to the Public Utility Code “[t]ogether . . . fairly balance the need for protection of ratepayers through meaningful review of their concerns against the needs of utilities, immediate or otherwise.”

19. As both *Bell Tel. Co.* and *Joseph Horne Co.* provide, the terms of Section 1308(d), including the seven-month limitation on the suspension of a general rate increase, are not merely procedural guidelines. Rather, those statutory terms exist to protect substantive rights and interests of utilities and their customers. As such, the statutory seven-month limitation on suspension of a proposed general rate increase cannot be unilaterally waived or extended by the Commission even if, as in *Bell Tel. Co.*, the Commission determines that circumstances might justify extending the administrative review process beyond that period. Simply stated, the substantive right to implement rates (either those adjudicated by a Commission final order entered before the end of the suspension period or, failing that, the utility’s proposed rates subject to refund) is independent from the procedural time-line the Commission may deem necessary for administrative review of a proposed general rate increase. As the Commonwealth Court found in *Bell Tel. Co.*, the Commission has lawful means at its disposal, which it has actually used in the past, to protect a utility’s unqualified right to implement rates at the end of the suspension period (via a mechanism for retrospective recoupment) even if the Commission sees the necessity to continue the administrative process beyond the Section 1308(d) suspension period.

⁸ See also *Baker v. Pa. P.U.C.*, 322 A.2d 735, 737 (Pa. Cmwlth. 1974) (explaining how the pre-amendment provisions operated and noting the introduction of legislation that would eliminate the allowance of interim rate relief).

**B. Neither The Executive Order Nor The Emergency Order
Override The Statutory Mandate Of Section 1308(d)**

20. The OCA Motion contends that the Executive Order and the Emergency Order furnish the authority for the Commission to exceed the statutory seven-month limitation on suspension of a general rate increase imposed by Section 1308(d). Neither Order purports to authorize such a drastic departure from substantive law, nor does such authority exist.

21. The Executive Order was issued pursuant to the Emergency Management Services Code, 35 Pa.C.S. § 7101. The portion of the Executive Order upon which the OCA Motion relies tracks the powers conferred on the Governor by Sections 7301(f)(1) and 7308(a) of the Emergency Management Code, as shown by the side-by-side comparison below:

Section 7301(f)(1)

[T]he Governor may: (1) 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 the emergency

Section 7308(a)

Commonwealth agencies.--In the case of a declaration of a state of emergency by the Governor, Commonwealth agencies may implement their emergency assignments without regard to procedures required by other laws (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials and expenditures of public funds.

Executive Order

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. Commonwealth agencies may implement emergency assignments without regard to procedures required by other laws, except mandatory constitutional requirements, pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds.

22. The plain text of the Emergency Management Services Code and the Executive Order does not confer unlimited authority to ignore duly-enacted Pennsylvania law. To the contrary, the Executive Order, following the limits of the Governor’s statutory authority, contains two critical limitations. First, the only “provisions of any regulatory statute” that are subject to suspension are those “prescribing the *procedures* for the conduct of Commonwealth business” (emphasis added). Second, suspension is authorized only if “strict compliance” would “in any way prevent, hinder, or delay necessary action in coping with this emergency.” The OCA’s reliance on the Executive Order as authority to override Section 1308(d) fails on both counts.

23. The seven-month limitation on suspension of a general rate increase is not merely procedural. Substantive law creates, defines and regulates rights, while procedural laws are those that address the methods and procedures by which rights are enforced.⁹ As the Commonwealth Court determined in *Bell Tel. Co.*, the Section 1308(d) limitation on the duration of the suspension period protects utilities from being forced to continue to charge rates that are “unconstitutionally confiscatory.”¹⁰ This is, unquestionably, a substantive right. The substantive nature of the seven-month limitation is also clear from *Joseph Horne Co.*, where the Pennsylvania Supreme Court found that the 1978 amendments to the Public Utility Code, by eliminating the right to interim rate relief and substituting a date-certain for terminating the suspension of a general rate increase, were designed to “fairly balance the need for protection of ratepayers through meaningful review of their concerns against the *needs* of utilities” to charge compensatory rates.¹¹

⁹ See *Cmwlt. v. Morris*, 771 A.2d 721, 738 (Pa. 2001); *Morabita’s Auto Sales v. Cmwlt.*, 715 A.2d 384, 386 (1998).

¹⁰ *Bell Tel. Co.*, at 90-91.

¹¹ *Joseph Horne Co.*, at 1111 (emphasis added).

24. Additionally, “strict compliance” with Section 1308(d) would *not* “prevent, hinder, or delay necessary action in coping with this emergency.” The functioning of Section 1308(d) does not impinge upon any actions by the Commonwealth to address the impact of COVID-19. The Commission has put in place procedures to enforce social distancing, including expanded use of electronic filing and service and telephonic and web-enabled hearings. There is no evidence – and none has been produced – to indicate that complying with the seven-month suspension limitation in Section 1308(d) is a roadblock to the Commonwealth’s response to the COVID-19 pandemic.

25. The OCA argued that the exigencies of working remotely diminish efficiency and, therefore, justify expanding the procedural schedule to provide more time to review the Company’s filing. However, even if that point were conceded, extending administrative review beyond the seven-month suspension period cannot come at the cost of violating a statutory mandate designed to protect utilities’ substantive right to implement new rates as of the end of the suspension period. Indeed, that is precisely what the Commonwealth Court held in *Bell Tel. Co.* Significantly, and as *Bell Tel. Co.* instructs, a perceived need to extend administrative review beyond the seven-month suspension period does not create an irreconcilable conflict with a utility’s right – protected by Section 1308(d) – to have new rates effective as of the end of the suspension period. This Commission has, on many occasions, allowed utilities to implement an additional charge to recover the revenues lost between the end of the seven-month suspension period and the subsequent date that the utility’s compliance tariffs are finally approved.¹² And, as the Commonwealth Court held in *Bell Tel. Co.*, that practice does not violate the prohibition against retroactive ratemaking.¹³

¹² See *Bell Tel. Co.*, at 90 n.5.

¹³ *Id.* at 88-89.

26. The Commission’s Emergency Order cannot provide authority to suspend the operation of Section 1308(d). The authority to issue the Emergency Order derives from the authority conferred by the Executive Order. As previously explained, the Executive Order does not authorize a wholesale departure from the mandates of substantive law, such as Section 1308(d). And, in any event, complying with the seven-month suspension requirement does not interfere with “necessary action in coping with this emergency.” Moreover, the Emergency Order itself states that “in pending rate cases litigation” the CALJ has delegated authority to “establish reasonable deadlines under the circumstances.” Nothing in the Emergency Order purports to authorize non-compliance with substantive statutory law, nor would such a purported authorization be lawful or enforceable, for the reasons set forth above and in Section III.A.

C. PAWC’s Offer To Voluntarily Extend The Suspension Period To February 4, 2021 Is Reasonable And Provides Sufficient Time To Address The Issues In This Case And Create A Properly Developed Record

27. At the Prehearing Conference, PAWC offered to voluntarily extend the suspension period in this case from January 28 to February 4, 2021, provided that, if a settlement were achieved, the settlement rates could become effective before that date. Because the Commission’s last public meeting prior to the end of the suspension period is January 14, 2021, the one-week extension of the *suspension* period that PAWC offered would expand the *procedural* schedule by approximately three weeks.

28. The OCA Motion (p. 4) asserts that a 45-day extension of the suspension period is needed because PAWC’s base rate case is allegedly “complex” and attempts to support that claim by pointing to the Company’s proposed two-year rate plan, Regionalization and Consolidation Surcharge and a tracking mechanism for changes in pension and other post-employment benefit (“OPEB”) costs occurring between base rate cases.

29. The OCA’s characterization of this case as uniquely “complex” is not accurate. As an initial matter, the Company’s two-year rate plan and surcharge/tracker proposals were made pursuant to the authority conferred by 66 Pa.C.S. § 1330. Nothing in Section 1330 suggests that proposals to implement its terms would require an expansion of the procedural schedule, let alone an extension of the statutory *suspension* period imposed by Section 1308(d).

30. The Company’s proposals cited by the OCA do not make this case “complex.” The Company’s proposed two-year rate plan is only one year beyond what would otherwise be deemed the fully projected future test year (“FPFTY”) in this case. Notably, PAWC has employed FPFTYs in its 2013 and 2017 base rate cases, which, like this case, included the revenue requirement of the Company’s water and wastewater operations. Both of the Company’s two prior cases were completed well within the seven-month suspension period. As experience with the use of FPFTYs shows, the issues arising from the use of FPFTYs did not make rate cases materially more “complex” than cases that were based solely on future test years,¹⁴ and there is no basis to conclude that a two-year rate plan would materially add to the complexity of cases that employ a FPFTY.

31. The Company’s proposed surcharge and pension/OPEB tracker seek approval of types of rate mechanisms that, as applied to other costs, have long been in use and are well-known and well-established. While other parties may contest the use of those rate mechanisms for the categories of costs PAWC has proposed, those issues do not create added complexity. Indeed, the level of pension and OPEB costs to be recovered in base rates reflecting future on-

¹⁴ The one major issue that typically arose in FPFTY rate cases involved the use of end-of-FPFTY rate base and end-of-FPFTY annualizations. However, that issue has now been resolved with finality by the Commonwealth Court’s decision in *McCloskey v. Pa. P.U.C.*, 225 A.3d 192 (Pa. Cmwlth. 2020), which resulted from the OCA’s appeal of the Commission’s final order in the base rate case of UGI Utilities, Inc. – Electric Division.

going conditions is an issue in most rate cases that is not generically different from the issue presented by PAWC's proposal in this case.

32. The OCA Motion (p. 6) stated that the proposed 45-day extension of the suspension period was needed because of the challenges created by "working remotely" and the absence of "usual access to physical files, photocopying, U.S. mail and support staff, among other services." As previously explained, the Company believes that its offer to extend the suspension period by one week, with a resulting three-week expansion of the procedural schedule, fully addresses the kinds of challenges identified by the OCA. However, in oral argument at the Prehearing Conference, the OCA changed the basis for its proposal. At that time, the OCA argued that its proposed extension should be adopted to reduce the impact of new rates on customers that might be experiencing financial challenges from business closures and other measures taken to reduce the transmission of the coronavirus.

33. The Company shares the OCA's concern about the financial effects of the government's response to the COVID-2 pandemic and, for that reason, among others, has proposed a substantial expansion of its low-income assistance programs in this case and initiated a number of temporary measures to assist customers.¹⁵ Indeed, the Company is open to a collaborative dialogue to find other ways to assist customers adversely affected by the COVID-19 pandemic without violating the terms of Section 1308(d). However, nothing in the Executive Order (or the Emergency Management Services Code on which it is based) suggests that the authority conferred by the Executive Order could be used in the manner, or for the purpose, the OCA has advanced. The Executive Order's directives to Commonwealth agencies are

¹⁵ On March 12, 2020, PAWC ceased service terminations for non-payment and stopped sending notices of termination. On March 13, 2020, PAWC began reconnecting customers previously disconnected for non-payment and waived all reconnections fees. On March 16, 2020, PAWC stopped applying late fees and interest to past-due accounts. PAWC Statement No. 1, pp. 49-50.

procedural and are designed to facilitate the conduct of the Commonwealth's business in the face of the challenges created by the COVID-19 pandemic and the steps taken to prevent its spread. It is not an open-ended conferral of power to block or delay recovery of legitimate business costs out of concern for the possible secondary financial effects on the public of the government's efforts to control the transmission of COVID-19. Indeed, if that were the case, the Executive Order would be used to forestall or deny any number of cost increases that are subject to some degree of prior approval by state government, such as increases in insurance premiums, to cite just one example. The Executive Order does not even purport to authorize Commonwealth agencies to take action on that basis. And, any attempt to use the Executive Order for such purposes is not only erroneous and improper, it violates substantive legal mandates that cannot be waived or suspended.

D. If The Commission Determines That The Procedural Schedule Should Be Extended Beyond February 4, 2021, PAWC Is Entitled To Charge The Rates Established In This Case As Of The End Of The Section 1308(d) Suspension Period

34. As explained in Section III.A., an extension of the *procedural schedule* should not be conflated with an extension of the *suspension period* mandated by Section 1301(d). The Commission can – and, in the past, has – extended the procedural schedule beyond the end of the suspension period without, thereby, violating black-letter law giving utilities the unqualified right to begin to recover increased revenues under finally-adjudicated rates as of the end of the suspension period.

35. In general base rate cases that are fully litigated, the Commission has historically issued a final order before – but generally near – the end of the suspension period in which it establishes the utility's authorized level of revenues, allocates the revenue increase among customer classes and approves the general design of the rates for each rate class. Using those

parameters, the utility is required to develop specific rates for each rate schedule and file “compliance tariffs” containing those rates along with a proof of revenues demonstrating that the compliance rates conform to the terms of the Commission’s final order. Because the development of compliance rates takes time, both the compliance filing and the Commission’s review, possible modification and final approval of that filing occurs after the end of the suspension period. As explained in *Bell Tel. Co.*, the Commission (until Bell Telephone Company’s case had arisen) had allowed the finally-approved rates to become effective as of the end of the suspension period. As a practical matter, this involved approving a surcharge, to apply prospectively, that was designed to recover the revenues the utility did not receive during the interval between the end of the seven-month suspension period and the date that its compliance tariff was allowed to go into effect. Thus, the administrative review process can, if necessary, extend beyond the end of the suspension period without thereby denying the affected utility its right to recover the increased revenues produced by its finally-adjudicated rates from and after the end of the suspension period.

36. In August 2014, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company concurrently filed base rate cases requesting general rate increases. The Commission initiated an investigation of each filing and assigned all four cases to the same two Administrative Law Judges for hearings and resolution. Because of concerns about litigating four base rate cases on the same schedule before the same Administrative Law Judges, the OCA, other parties and the Administrative Law Judges themselves expressed their interest in extending the procedural schedule. The parties reached an agreement to extend the procedural schedule by sixteen days (from May 3 to May 19, 2015), upon the condition that, at the time compliance filings were made, the companies would be permitted to implement a surcharge to recoup lost revenues during the period from the original

end of the suspension period through the effective date of the companies' approved compliance filings. The Administrative Law Judges approved the parties' agreement in their Second Prehearing Order¹⁶ and in their Recommended Decisions issued on March 9, 2015.¹⁷ The Recommended Decisions were adopted as the action of the Commission by its final orders in each case entered April 9, 2015.

37. The procedure described in Paragraph Nos. 35 and 36, above, which has been successfully employed by the Commission in the past, is available and could be used in this case. While the Company believes that its proposal to voluntarily extend the suspension period to February 4, 2021 is reasonable and should be approved, if the Commission were to authorize an extension of the procedural schedule beyond February 4, 2021, such an extension should be accompanied by approval of a recoupment surcharge that permits the Company to recover the increased revenues its finally approved rates would produce if they had been made effective from the end of the Section 1308(d) suspension period.

38. In addition, if the Commission extends the procedural schedule beyond February 4, 2021, it should also direct that the ALJ set a date-certain for the closure of discovery requests related to the Company's direct case that is the later of August 6, 2020 or a date 21 days prior to the date that opposing parties' direct testimony must be served. An expansion of the procedural schedule beyond February 4, 2021 should only enable parties to conduct the same magnitude of discovery they would have conducted under a normally-applicable schedule if the alleged difficulties of a remote working environment and associated access limitations did not exist. It

¹⁶ *Pa. P.U.C. v. West Penn Power Co.*, Docket Nos. R-2014-2428742 *et al*; *Pa. P.U.C. v. Pennsylvania Electric Co.*, Docket Nos. R-2014-2428743 *et al*; *Pa. P.U.C. v. Pennsylvania Power Co.*, Docket Nos. R-2014-2428744 *et al*; *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket Nos. R-2014-2428745 *et al*. Second Prehearing Order issued Oct. 22, 2014, p. 5.

¹⁷ *See, e.g., Pa. P.U.C. v. Metropolitan Edison Co.*, Docket Nos. R-2014-2428745 *et al*. (Rec. Dec. issued Mar. 9, 2015, p. 4).

should not be a license to inflate the total volume of discovery. Establishing a reasonable cut-off date, such as that proposed above, for discovery related to the Company's direct case would help to assure PAWC is not unfairly burdened by an extended discovery period created by a schedule extension.

WHEREFORE, for the foregoing reasons, the Commission should grant reconsideration of the CALJ Order, to which the Company is entitled under 52 Pa. Code § 5.44(a), and enter an order that sets aside the CALJ Order, accepts PAWC's offer to voluntarily extend the suspension period in this case to February 4, 2021, and directs the ALJ to establish a procedural schedule consistent with that suspension period. If the Commission determines that an extension of the procedural schedule beyond February 4, 2021 is necessary, it should authorize PAWC to implement a recoupment surcharge that permits the Company to recover the increased revenues that the rates finally approved by the Commission would produce if they had been made

effective from the end of the Section 1308(d) suspension period and should direct the ALJ to set a date-certain for ending discovery requests related to the Company's direct case.

Respectfully submitted,



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Dated: June 24, 2020

Counsel for
Pennsylvania-American Water Company

VERIFICATION

I, Rod P. Nevirauskas, hereby state that I am the Senior Director of Rates and Regulations for Pennsylvania-American Water Company (“PAWC”) and that the facts set forth in PAWC’s Petition for Reconsideration of Staff Action are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the provisions and penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Date: June 24, 2020

Rod P. Nevirauskas

APPENDIX A

**ORDER OF THE CHIEF ADMINISTRATIVE LAW JUDGE
ISSUED JUNE 4, 2020**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ORDER GRANTING 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**

On April 29, 2020, Pennsylvania-American Water Company (PAWC) filed with the Pennsylvania Public Utility Commission (Commission) water and wastewater tariff supplements proposing to increase combined annual revenues by \$92.4 million for 2021 and \$46.2 million for 2022, effective June 28, 2020. By Order entered May 21, 2020, the Commission suspended for investigation PAWC’s tariff supplements for seven (7) months or until January 28, 2021, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d).

On May 28, 2020, the Office of Consumer Advocate (OCA) filed “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” (Motion). In its Motion, OCA states that a forty-five (45) day extension of the statutory suspension period “is necessary to meet the mounting challenges resulting from the COVID-19 pandemic.” Motion at 8.

The presiding officer assigned to this case, Administrative Law Judge (ALJ) Conrad A. Johnson, convened a prehearing conference on June 4, 2020, in which I participated. During the prehearing conference parties placed on the record their positions regarding OCA's Motion. During deliberation, ALJ Johnson informed me of his position regarding OCA's Motion.

By Emergency Order dated March 20, 2020, in response to the COVID-19 pandemic, the Commission authorized the Chief ALJ in pending rate case litigation to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding ALJ. *See, Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, M-2020-3019262, at 2.

In regard to the present pending rate case litigation, after consideration of the positions of the parties and ALJ Johnson, I find it reasonable under the circumstances to extend the statutory suspension period by forty-five (45) days or until March 15, 2021.¹ Therefore, I grant OCA's Motion. Further, I placed my ruling on this matter on the record during the prehearing conference.

Any party dissatisfied with my resolution of this matter may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order. The Petition shall be sent via email or e-filing only. The email should be addressed to: rchiavetta@pa.gov. If no timely request is made, this Order will be deemed a final action of the Commission.

¹ Forty-five (45) days from January 28, 2021 falls on Sunday, March 14, 2021. Hence, Monday, March 15, 2021 is computed as the 45th day. *See*, 52 Pa. Code § 1.12.

ORDER

THEREFORE,

IT IS ORDERED:

1. That 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, in *Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company*, Docket Nos. R-2020-3019369 and R-2020-3019754 is granted.

2. That the statutory suspension period in these cases are extended by forty-five (45) days or until March 15, 2021.

3. That any party dissatisfied with my resolution of this matter may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order. The Petition shall be sent via email or e-filing only. The email should be addressed to: rchiavetta@pa.gov. If no timely request is made, this Order will be deemed a final action of the Commission.

Date: June 4, 2020

/s/
Charles E. Rainey Jr.
Chief Administrative Law Judge

SERVICE LIST

**R-2020-3019369, et al. - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA
AMERICAN WATER COMPANY**

Revised 6/4/20

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APPENDIX B

OCA EXPEDITED MOTION FOR AN EXTENSION OF THE STATUTORY SUSPENSION PERIOD OF PENNSYLVANIA-AMERICAN WATER COMPANY'S BASE RATE PROCEEDINGS


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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FAX (717) 783-7152
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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

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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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

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,

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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,

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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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