Via electronic service only due to Emergency Order at M-2020-3019262

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility 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

Charles and Jennifer Spryn : C-2020-3019905

Cherise H. Sympson : C-2020-3020209

David Dollard : C-2020-3020219

Jan K. Vroman : C-2020-3020220

Pennsylvania-American Water Large User Group : C-2020-3020238

Anna-Maria Rucci : C-2020-3020245

West Norriton Township : C-2020-3020401

Andrew Wu : C-2020-3020497

Timothy Fuhrmann : C-2020-3020516

Terrence Reilley and Dorothy Reilley : C-2020-3020524

:

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

Mr. and Mrs. Gerald S. Lepre, Jr. : C-2020-3019646

William H. Rissmiller : C-2020-3020198

David Dollard : C-2020-3020219

Pennsylvania-American Water Large User Group : C-2020-3020240

Terrence Reilley and Dorothy Reilley : C-2020-3020524

:

v. :

:

Pennsylvania-American Water Company :

**FIRST INTERIM ORDER**

**GRANTING RESPONDENT’S PETITION FOR PROTECTIVE ORDER**

**Rate Filings**

On April 29, 2020, Pennsylvania-American Water Company (PAWC or the

Company) filed with the Pennsylvania Public Utility Commission (Commission) 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. Under Section 1308(d) of the Pennsylvania Public Utility Code (Code), 66 PA.C.S. § 1308(d), PAWC requested Commission approval of an increase in water and wastewater rates based on a multi-year plan ending December 31, 2022. The requested increase equals $138.6 million over two years: $92.4 million, annualized over the entire year 2021,[[1]](#footnote-1) and $46.2 million in 2022. This equates to an annualized 12.9% revenue increase in 2021 and a 5.8% revenue increase in 2022.

PAWC is a public utility that serves customers located in 37 counties across Pennsylvania. As of December 31, 2019, the Company 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. PAWC is a subsidiary of American Water Works Company, Inc., which is headquartered in Camden, New Jersey.

Accompanying the Water and Wastewater Tariff Supplements, the

Company filed supporting information required by the Commission’s regulations, including the

prepared direct testimony of the Company’s initial witnesses and the various exhibits to be sponsored by them. Over the course of this proceeding, the Company may submit additional testimony and exhibits in response to the presentations of, or cross-examination by, other Parties. In addition, the Company may revise certain statements and exhibits during the Commission’s investigation to reflect known and measurable changes reasonably expected to occur during the applicable test periods. The Company asserts that the record at the close of this proceeding will demonstrate the justness and reasonableness of its proposed rates.

**Rate Suspension and Investigation**

By Orders entered May 21, 2020, the Commission instituted formal investigations 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. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

**Prehearing Conference Notice and Order**

On May 22, 2020, a Notice was issued to the Parties informing them the proceedings were assigned to the undersigned Administrative Law Judge (ALJ) and that a telephonic prehearing conference would be held on June 4, 2020, at 1:00 p.m.[[2]](#footnote-2) Also, on May 22, 2020, the ALJ issued a Prehearing Conference Order concerning regulations pertaining to prehearing conferences, 52 Pa.Code §§ 5.221-5.224, and directed the Parties to submit their respective Prehearing Memorandums by June 3, 2020. Various Parties filed Prehearing Memorandums. The Prehearing Conference Order cautioned the Parties that you must participate in the prehearing conference and that failure to do so would result in your removal from the Service List.

**Tariff Supplements Effective January 28, 2021**

On May 27, 2020, in compliance with the Commission’s May 21, 2020 Orders,

PAWC filed Supplement No. 20 to Tariff Water – Pa. P.U.C. No. 5 with no effective date, to reflect the suspension of Tariff No. 5 until January 28, 2021, and Supplement No. 20 to Tariff Wastewater – Pa. P.U.C. No. 16 with no effective date, to reflect the suspension of Tariff No. 16 until January 28, 2021.[[3]](#footnote-3)

**Complaints, Notices of Appearances, Protests and Petitions to Intervene**

Pleadings to PAWC’s rate filings have been filed by various Parties as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Date Filed | Party | Pleading | Docket Number |
| April 29, 2020 | Jessica and Jeffrey LaBarge | Complaint | C-2020-3019627 |
| April 29, 2020 | Mr. and Mrs. Gerald S. Lepre | Complaint | C-2020-3019646 |
| May 1, 2020 | PA Representative Austin Davis | Protest | R-2020-3019369  R-2020-3019371 |
| May 7, 2020 | Office of Consumer Advocate | Complaint  Public Statement Notice of Appearance | C-2020-3019751  C-2020-3019754 |
| May 7, 2020 | PA PUC Bureau of Investigation and Enforcement | Notice of Appearance | R-2020-3019369  R-2020-3019371 |
| May 7, 2020 | PA Senator Judith L. Schwank | Protest | R-2020-3019369  R-2020-3019371 |
| May 11, 2020 | Office of Small Business Advocate | Complaint  Public Statement  Notice of Appearance | C-2020-3019767  C-2020-3019772 |
| May 12, 2020 | Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania | Petition to Intervene and Answer | R-2020-3019369  R-2020-3019371 |
| May 12, 2020 | Victoria Lozinak | Complaint | C-2020-3019778 |
| May 18, 2020 | Commission on Economic Opportunity | Petition to Intervene | R-2020-3019369  R-2020-3019371 |
| May 26, 2020 | Charles and Jennifer Spryn | Complaint | C-2020-3019905 |
| June 2, 2020 | AK Steel Corporation | Petition to Intervene  Notice of Appearance | R-2020-3019369  R-2020-3019371 |
| June 2, 2020 | William H. Rissmiller | Complaint | C-2020-3020198 |
| June 3, 2020 | Cherise H. Sympson | Complaint | C-2020-3020209 |
| June 3, 2020 | David Dollard | Complaint | C-2020-3020219 |
| June 3, 2020 | Jan K. Vroman | Complaint | C-2020-3020220 |
| June 4, 2020 | Pennsylvania-American Water Large User Group | Complaint  Notice of Appearance | C-2020-3020238  C-2020-3020240 |
| June 4, 2020 | Anna-Maria Rucci | Complaint | C-2020-3020245 |
| June 15, 2020 | West Norriton Township | Complaint | C-2020-3020401 |
| June 23, 2020 | Andrew Wu | Complaint | C-2020-3020497 |
| June 25, 2020 | Timothy Fuhrman | Complaint | C-2020-3020516 |
| June 25, 2020 | Terrence Reilley and Dorothy Reilley | Complaint | C-2020-3020524 |

**Motions, Answers and Additional Petitions**

On May 28, 2020, the Office of the Consumer Advocate (OCA) filed an Expedited Motion for an Extension of the Statutory Period of Pennsylvania-American Water Company’s Base Rate Proceeding (Motion for Extension). OCA asserted 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.”

On June 3, 2020, PAWC filed a Petition for Protective Order in these proceedings

and a Petition for Consolidation of Docket Nos. R-2020-3019369 and R-2020-3019371 into a

single proceeding.

**Prehearing Conference**

The ALJ convened the prehearing conference as scheduled on June 4, 2020. Chief Administrative Law Judge E. Charles Rainey attended the conference to consider OCA’s   
Motion for Extension. The following Parties participated in the conference:

|  |  |
| --- | --- |
| Party | Representative(s) |
| PAWC | Susan Simms Marsh, Esquire  Anthony C DeCusatis, Esquire  Kenneth M. Kulak, Esquire  Mark A. Lazaroff, Esquire |
| I&E | Carrie B. Wright, Esquire |
| OCA | Christine M. Hoover, Esquire  Erin L. Gannon, Esquire  Harrison W. Breitman, Esquire |
| Office of Small Business Advocate (OSBA) | Erin Fure, Esquire  Daniel G. Asmus, Esquire |
| Pennsylvania-American Water Large User Group (PAWLUG) | Adeolu A. Bakare, Esquire  Jo-Anne Thompson, Esquire |
| Jessica LaBarge | Self-represented |
| Jan K, Vroman | Self-represented |
| CAUSE-PA | Ria M Pereira, Esquire |
| AK Steel | Kurt J. Boehm, Esquire |

Prior to discussion of the litigation schedule, Chief ALJ Rainey received the Parties’ oral arguments on OCA’s Motion for Extension. After argument and deliberation, Chief ALJ Rainey granted OCA’s Motion for Extension on the record, thereby extending the statutory suspension period by forty-five (45) days, i.e., until March 15, 2021. Chief ALJ Rainey’s ruling was reduced to writing in the 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 Proceeding, which was issued to the Parties on June 4, 2020.[[4]](#footnote-4)

The remainder of the conference established the litigation schedule and addressed other outstanding matters. On June 15, 2020, the ALJ issued a Prehearing Order setting forth the litigation schedule and confirming the consolidation the Complaints filed in this proceeding with PAWC’s rate filing at Docket No. R-2020-3019369. The Prehearing Order noted that PAWC’s Petition for a Protective Order (Petition), to which there was no objection to during the conference, would be addressed in a separate order.

In its Petition PAWC sought to limit the disclosure of confidential and proprietary information (Confidential Information). In part, the Petition reads as follows:

2. As part of its supporting data, PAWC efiled documents containing Confidential Information directly to Pennsylvania Public Utility Commission Secretary Rosemary Chiavetta. The documents containing Confidential Information were submitted by PAWC bearing a legend stating that appropriate protection of such Confidential Information had been requested, and pending further action by the Commission, such Confidential Information should not be disclosed to the public. The Commission’s regulations at 52 Pa.Code § 5.365(b) provide that the Commission will not disclose such documents, or the information contained therein pending its decision on a Petition for Protective Order.

3. PAWC has received, and expects to continue to receive, interrogatories that may require the production of Confidential Information or documents containing Confidential Information. Additionally, in the course of this proceeding, parties other than PAWC may be requested to produce information and documents they consider confidential. Accordingly, the entry of a Protective Order covering Confidential Information produced by any party in response to discovery and Confidential Information that parties may seek to introduce in evidence will facilitate the orderly and efficient progress of this proceeding.

Petition ¶¶ 2-3. PAWC attached a proposed Protective Order to its Petition.

**Criteria for Protective Order**

Under 52 Pa.Code §§ 5.362(a)(7) and 5.365, the ALJ or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public’s interest in having access to the confidential information. In applying this standard, relevant factors to be considered include the following: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant’s competitors and trade partners. 52 Pa.Code §§ 5.365(a)(1) – (3).

Information provided in these rate proceedings by a public utility is generally highly valuable to the public utility and generally unknown to others; consequently, such Protective Orders are issued as standard practice to protect the confidentiality of the public utility’s information.[[5]](#footnote-5)

**Consideration of the Petition and Order**

Upon due consideration of the Petition for Protective Order filed in this proceeding by Pennsylvania-American Water Company on June 3, 2020, representing that proprietary or confidential information is being sought or requested during discovery, and there being no objection to the granting of the Petition, the Petition will be granted in the ordering paragraphs below.

THEREFORE,

IT IS ORDERED THAT:

1. Any information provided to the Pennsylvania Public Utility Commission (Commission) or any parties in connection with the above-captioned proceeding that a producing party claims constitutes or contains Confidential Information shall be specifically identified and marked as Confidential Information. The producing party shall designate data or documents as constituting or containing Confidential Information by affixing a conspicuous “CONFIDENTIAL” stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Confidential Information, the producing party, insofar as reasonably practicable within time constraints

imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Confidential Information and shall serve such documents separately from non-confidential information.

2. Each document and the information contained therein designated as “Confidential Information” shall be used by the recipient solely for purposes relating to the prosecution, review and processing of this proceeding and for no other purpose; and such documents and information shall be maintained in secure files, separate from public information, until returned to the producing party or destroyed pursuant to the terms hereof.

3. With respect to all Confidential Information, it is further ORDERED that:

(a) Access to the documents designated as “Confidential Information,” and to the information contained therein, shall be limited to the parties and their identified attorneys, employees, and consultants whose examination of the Confidential Information is required for the conduct of this proceeding.

(b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Protective Order to any person(s) other than their identified employees and any identified witnesses/consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and is not expected to testify, or is called to testify in this proceeding. All employees (except Bureau of Investigation & Enforcement (“BI&E”) witnesses who are full-time employees and shall be entitled to receive documents without individually executing a Certification), consultants or experts of any of the parties bound by this Protective Order who are to receive copies of documents or information produced pursuant to this Protective Order shall have executed a copy of the Certification attached hereto as Appendix A, which executed Certification shall be forthwith provided to counsel for the producing party with copies to counsel for other parties. The BI&E Prosecutors who enter an appearance in this proceeding shall represent that all BI&E witnesses/employees will be bound by this Protective Order.

(c) No other disclosure of Confidential Information shall be made to any person or entity except with the express written consent of the producing party or upon further order of the Commission or of any Court of competent jurisdiction which may review these matters.

4. The acceptance by the parties of documents or information which has been identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Accordingly, as provided in 52 Pa. Code § 5.365, a party receiving Confidential Information retains the right, either before or after receipt of such Confidential Information, to challenge the legitimacy of the claim that the information is proprietary. Any party may initiate such a challenge by notifying the Commission, with reasonable notice to all other parties, that it wishes to challenge the designation of the material as Confidential Information. In that event, the producing party, as the provider of the Confidential Information, shall have the burden of proving that the material is entitled to protected status. However, notwithstanding such challenge, all parties shall continue to treat the documents and information subject to challenge as Confidential Information in accordance with the terms of this Protective Order, pending resolution by the Commission of the dispute as to its status.

5. The producing party retains the right to seek restrictions on the production, distribution and use by other parties of the Confidential Information beyond the protection expressly afforded such Confidential Information by this Protective Order.

6. This Protective Order shall not operate as a determination, for any purpose, that any documents or information produced pursuant to this Protective Order are either admissible or inadmissible in these or any other proceedings.

7. Documents or other materials containing Confidential Information filed with the Commission in this proceeding, including but not limited to pre-filed testimony and pre-filed exhibits, shall be labeled “CONFIDENTIAL” and shall be deemed filed under seal. During evidentiary hearings, if any, in this proceeding, all persons present for such hearings shall be subject to the terms of this Protective Order and may be required to so affirm for purposes of the record. The portion of the record containing the Confidential Information, including the portions of transcripts of oral testimony discussing Confidential Information, shall be placed under seal.

8. The Commission and any other state agency that may have access to, or receive copies of, the Confidential Information will deem and treat such information as within the exemption from disclosure provided in the Pennsylvania Right-to-Know Act set forth in 65 P.S. § 67.708(b) until such time as the information may be found to be non-proprietary by the Commission or by a court of competent jurisdiction.

9. Confidential Information which is placed on the record of this proceeding under seal shall remain with the Commission under seal after the conclusion of the proceeding. If such Confidential Information is provided to appellate courts for the purposes of appeal(s) from this proceeding, such information shall be provided, and shall remain, under seal.

10. Upon the final resolution of proceedings in which Confidential Information has been provided, which includes the exhaustion of appeals, if any, all documents and other materials containing Confidential Information shall, within thirty (30) days of the producing party’s request, be either: (1) returned to counsel for the producing party; or (2) destroyed. If a receiving party chooses to destroy the Confidential Information, then it shall, in the case of the BI&E, notify the producing party, and in the case of all other parties, certify to the producing party, that the Confidential Information has been destroyed by it and its employees, consultants, and other representatives, and that the terms of this Protective Order have been satisfied. Provided, however, that the BI&E, the OCA, and the Office of Small Business Advocate may maintain in their official files copies of all pleadings, briefs, statements, exhibits and transcripts in this proceeding and, further provided, that all such pleadings, briefs, statements, exhibits and transcripts containing Confidential Information shall remain subject to the terms of this Protective Order.

11. A single copy of documents returned to the producing party or certified as destroyed upon resolution of this proceeding, as provided in this Protective Order, shall be kept on file at the producing party’s offices for two years after the final resolution of this proceeding, as defined previously, for review by the parties under the terms of this Protective Order upon at least twenty days’ notice to counsel for the producing party.

12. The issuance of this Protective Order shall not prejudice the producing party’s right to challenge the production of any documents or information sought in discovery by any party on the grounds that such documents or information are not properly discoverable.



Dated: June 26, 2020

**APPENDIX A**

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

TO WHOM IT MAY CONCERN:

The undersigned is the of

(the receiving party).

The undersigned has read, and understands that, the Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE

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EMPLOYER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE

**R-2020-3019369, et al. - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA AMERICAN WATER COMPANY*ACTIVE SERVICE LIST Revised 6/26/20***

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**R-2020-3019369, et al. - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA AMERICAN WATER COMPANY*INACTIVE SERVICE LIST Revised 6/26/20***

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1. PAWC submitted the new rates would become effective on January 28, 2021, if implemented at the end of its current suspension period, and the non-annualized increase in 2021 would be less than $92.4 million and the non-annualized total increase would be less than $138.6 million. [↑](#footnote-ref-1)
2. Due to the ongoing COVID-19 pandemic, the Commission’s offices were closed. Consequently, the prehearing conference was scheduled to convene telephonically. [↑](#footnote-ref-2)
3. On June 18, 2020, PAWC filed Supplement No. 21 to Tariff Water-PA P.U.C. No. 5 and Supplement No. 21 to Tariff Wastewater-PA P.U.C. No. 16 thereby further suspending the effective date until March 15, 2021. [↑](#footnote-ref-3)
4. On June 24, 2020, PAWC filed a Petition for Reconsideration of CALJ Rainey’s June 4, 2020 Order. The Petition is pending before the Commission. [↑](#footnote-ref-4)
5. E.g., *Pa. P.U.C. v. Pennsylvania-American Water Co.,* Docket No. R-2013-2355276, Protective Order — Order #5 (July 11, 2013) (Administrative Law Judges Angela T. Jones and Darlene Davis Heep); *Pa. P.U.C. v. Pennsylvania-American Water Co.,* Docket No. R-2011-2232243, Prehearing Order (July 11, 2011) (Administrative Law Judges Angela T. Jones and Eranda Vero); *Pa. P.U.C. v. Pennsylvania-American Water Co. (Wastewater),* Docket Nos. R-20102166208, 2010-2166210, 2010-2166212 and 2010-2166214, Prehearing Order (July 12, 2010) (Chief Administrative Law Judge Charles E. Rainey, Jr.); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.,* Docket No. R-2009-2132019, Order Granting Issuance Of Protective Order (March 16, 2010) (Administrative Law Judge Angela T. Jones). [↑](#footnote-ref-5)