


COMMONWEALTH OF PENNSYLVANIA



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July 6, 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:

Attached for electronic filing please find the Office of Consumer Advocate's Answer and Verification to Pennsylvania-American Water Company's Petition for Reconsideration of Staff Action in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christine Maloni Hoover  
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Senior Assistant Consumer Advocate  
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Enclosures:

cc: The Honorable Conrad A. Johnson (**email only**)  
Office of Special Assistants (**email only**)  
Certificate of Service

\*291514

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

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THE OFFICE OF CONSUMER ADVOCATE’S ANSWER TO  
PENNSYLVANIA-AMERICAN WATER COMPANY’S PETITION FOR  
RECONSIDERATION OF STAFF ACTION

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**I. INTRODUCTION**

In accordance with 52 Pa. Code Sections 1.31 and 5.61, the Office of Consumer Advocate (“OCA”) files the following Answer to Pennsylvania-American Water Company’s (“PAWC” or “Company”) Petition for Reconsideration of Staff Action (“Petition”) in the above-captioned proceeding. The OCA opposes PAWC’s request for reconsideration of Chief Administrative Law Judge (“CALJ”) Charles E. Rainey’s Order Granting OCA’s Expedited Motion for an Extension of the Statutory Period of PAWC’s Base Rate Proceedings (“CALJ Order”) issued on June 4, 2020 pursuant to the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Emergency Order dated March 20, 2020.<sup>1</sup> As the Chief Administrative Law Judge found in his June 4, 2020 Order, the OCA’s request for a forty-five (45) day extension was reasonable under the circumstances and the Chief ALJ reached his decision after consideration of the positions of all parties and the presiding Administrative Law Judge (“ALJ”). Copies of the CALJ Order and the OCA’s Expedited Motion for an Extension of the Statutory Period of PAWC’s Base Rate

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

Proceedings are attached as Appendices A and B to this Answer. The OCA submits that PAWC's Petition for Reconsideration of Staff Action should be denied.

## **II. BACKGROUND**

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency in response to COVID-19. The Governor's 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."<sup>2</sup> On March 20, 2020, the Commission issued its Emergency Order, finding that additional measures must be taken to ensure continued operations. The Emergency Order states as follows:

These measures are intended to prevent regulatory or statutory procedural rules, including those providing for the calculation of time periods for final Commission action, from interfering with the overall conduct of Commission business in the public interest during the emergency.

Emergency Order at 1-2. The Emergency Order authorizes the suspension, extension, waiver, or change of any regulatory, or statutory, procedural deadline for a maximum period of ninety (90) days. Emergency Order at 2. The Commission directed that its Bureau Directors are delegated authority to suspend, extend, waive or change a statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission, after consultation with all the interested parties, as deemed necessary and appropriate. Emergency Order at 4 (ordering paragraph 4). The Commission provided that review of those orders would be done by appeal of a staff action. Emergency Order at 4 (ordering paragraph 6); 52 Pa. Code § 5.44.

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<sup>2</sup> 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).

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.<sup>3</sup> The Commission's offices and the OCA's office in Harrisburg remain closed and all employees are working from home, with limited exception.

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).<sup>4</sup> Under the Commission's suspension orders, new rates would have taken effect on January 28, 2021.

On May 28, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company's Base Rate Proceedings ("Motion") requesting a forty-five (45) day extension. On June 1, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") filed an answer in support of the OCA's Motion. On June 4, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed an answer in support of the OCA's Motion.

A Prehearing Conference was held before the CALJ and the ALJ on June 4, 2020. At the Prehearing Conference, I&E and CAUSE-PA reiterated their support of the OCA's Motion and the Office of Small Business Advocate ("OSBA"), AK Steel Corporation ("AK Steel"), Pennsylvania-American Water Large Users Group ("PAWLUG"), and Formal Complainant

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<sup>3</sup> <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>.

<sup>4</sup> See PAWC filing, Vol. I, Tab 2 (Statement of Reasons).

LaBarge stated support for an extension of the statutory suspension period. Tr. at 29-36. The CALJ granted the OCA's Motion after considering PAWC's arguments against the extension.<sup>5</sup> Tr. at 23-29. The CALJ issued the CALJ Order granting OCA's Motion on June 4, 2020.

The Company filed a Petition for Reconsideration of Staff Action on June 24, 2020. The OCA submits that the CALJ fully considered the positions of all parties and the ALJ in making a determination on the OCA's Motion. The OCA now files this Answer to the Company's Petition for Reconsideration of Staff Action and, for the reasons set forth below, respectfully requests that the Petition be denied.

### **III. ANSWER**

The OCA commends the Commission on its prompt and important action of issuing the Emergency Order to address the modification of regulatory and statutory deadlines in light of the COVID-19 pandemic. As the Commission properly recognized in its Emergency Order, Governor Wolf's Proclamation of Disaster Emergency authorizes and directs the suspension of "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...would in any way prevent, hinder, or delay necessary action in coping with this emergency." Emergency Order at 1 quoting Proclamation of Disaster Emergency.

The Emergency Order discusses the Governor's Proclamation of Disaster Emergency and its relation to statutory deadlines as follows:

Under the Proclamation of Disaster Emergency, it is both necessary and appropriate to provide this flexibility to ensure operations continue as smoothly as possible and to prevent any regulatory statute or rule prescribing procedures for the conduct of Commission business from unreasonably interfering with the public interest.

Emergency Order at 3.

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<sup>5</sup> The Company did not file a formal answer to the OCA's motion.

The OCA submits that the Commission's Emergency Order clearly addressed the issues surrounding statutory deadlines. The Emergency Order is broad in its discussion of statutory and regulatory deadlines and does not limit extensions to procedural deadlines. The Emergency Order stated as follows:

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

Emergency Order at 4 (ordering paragraph 2).

Further, the Commission has addressed the procedure under which extension of statutory deadlines could be granted, stating as follows:

All Bureau Directors are hereby delegated the authority to suspend, extend, waive or change a statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission, after consultation with all interested parties, as deemed necessary and appropriate.

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.

Emergency Order at 4 (ordering paragraphs 4 and 5).

At the Prehearing Conference held on June 4, 2020, the CALJ carefully considered the positions of all parties, along with the input of the presiding ALJ, to determine whether to extend the statutory suspension period by forty-five (45) days pursuant to the Emergency Order. PAWC argues that reconsideration should be granted to "correct the errors of law made by the CALJ Order." Petition at 7. The CALJ's Order, however, does not contain any errors of law. The OCA respectfully requests that the Commission deny the Company's Petition.

**A. The Emergency Order Applies to Statutory Periods**

PAWC argues that the seven month suspension period contained in Section 1308(d) of the Public Utility Code cannot be unilaterally waived or extended by the Commission. Petition at 8.

Governor Wolf, however, 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. Proclamation of Disaster Emergency at 2.

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."<sup>6</sup> The Commission's Emergency Order addresses the Proclamation of Disaster Emergency as follows:

Under the Proclamation of Disaster Emergency, it is both necessary and appropriate to provide this flexibility to ensure operations continue as smoothly as possible and to prevent any regulatory statute or rule prescribing procedures for the conduct of Commission business from unreasonably interfering with the public interest.

Proclamation of Disaster Emergency at 3.

Consistent with the Governor's Disaster proclamation, the Commission's Emergency Order reflects a determination that 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.

Emergency Order at 3 (emphasis in original).

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<sup>6</sup> 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).

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.

Emergency Order at 4.

Contrary to PAWC's arguments, this is not a determination that is open-ended. The Commission determined that its Emergency Order would run with the timing of the Proclamation of Disaster Emergency. Emergency Order at 4 (ordering paragraph 2). It also provided that extensions of deadlines would not exceed 90 days, except upon expedited certification of the question by the CALJ or Bureau Director to the Commission. Emergency Order at 4 (ordering paragraph 5). Moreover it provided that, following the Proclamation of Disaster Emergency, all deadlines suspended may be extended by an additional thirty days. Emergency Order at 4 (ordering paragraph 3).

The OCA submits that the CALJ was properly acting under the authority as delegated by the Commission. The CALJ discussed his delegated authority as follows in his order:

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.

CALJ Order at 2.

The CALJ established a reasonable deadline under the circumstances, after consideration of the positions of the parties and the presiding ALJ. In his Order ruling on the OCA's Motion, the CALJ determined as follows:

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.<sup>7</sup> Therefore, I grant OCA's Motion. Further, I placed my ruling on this matter on the record during the prehearing conference.

CALJ Order at 2.

The situation surrounding COVID-19 is unprecedented, and the OCA submits that the Emergency Order issued by the Commission, delegating authority to the CALJ to modify statutory deadlines in light of the Governor's Proclamation of Disaster Emergency and due to the extraordinary circumstances faced by the Commission and interested stakeholders, is reasonable.

The OCA further submits that the Commission's ability to suspend, extend, or waive statutory deadlines, under the Proclamation of Disaster Emergency, is appropriate to apply to the instant proceedings. The filing of base rate cases approximately one month following the issuance of the Commission's Emergency Order and during an ongoing global pandemic is a reasonable basis for the Commission to deny the Company's Petition and sustain the CALJ's Order.

**B. The Governor's Proclamation of Disaster Emergency and the Commission's Emergency Order Were Properly Applied By the CALJ And Did Not Commit Errors Of Law**

PAWC argues that neither Governor Wolf's Proclamation of Disaster Emergency nor the Commission's Emergency Order override the statutory mandate of Section 1308(d) of the Public Utility Code. Petition at 12. PAWC cites several cases to argue that the language of Section 1308(d) is substantive and not a procedural timeline that falls within the Emergency Order. PAWC further argues that the plain text of the Emergency Management Services Code and Governor Wolf's Executive Order does not confer unlimited authority to ignore Pennsylvania law. Petition at 12. Additionally, PAWC argues that the Commission has put in place procedures to address the global pandemic and that no evidence has been produced to indicate that complying with the seven-

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<sup>7</sup> Forty-five (45) days from January 28, 2021 falls on Sunday, March 14, 2021. Hence, Monday, March 15, 2021 is computed as the 45<sup>th</sup> day. See, 52 Pa. Code § 1.12.

month suspension deadline in Section 1308(d) is a “roadblock” to the Commission’s response to the COVID-19 pandemic. Petition at 13.

PAWC’S primary argument appears to be that the Commission’s Emergency Order is contrary to law. PAWC cites *Bell Tel. Co. v. Pa. P.U.C.*<sup>8</sup>, *Joseph Horne Co. v. Pa. P.U.C.*<sup>9</sup>, *Baker v. Pa. P.U.C.*<sup>10</sup> in support of its argument that the seven month suspension period is a substantive right that cannot be extended. None of the cases cited by the Company in its Petition were decided during a disaster emergency, where the Governor issued a proclamation explicitly permitting suspension of regulatory statutes and, following from which, the Commission issued an accompanying Emergency Order explicitly permitting the extension of statutory deadlines.

In *Bell*, the statutory suspension period’s expiration was determined to be the proper date for the new rates to go into effect, as opposed to the date of the Company’s compliance filing.<sup>11</sup> In the instant proceeding, there is no disagreement that new rates will go into effect at the end of the suspension period. New rates will still go into effect at the end of the suspension period. Additionally, *Bell* was not decided during an active Emergency Order where the Commission was given the authority by the Governor to extend procedural deadlines to cope with a disaster emergency resulting from a global pandemic. Under the Emergency Order, statutory deadlines are permitted to be extended at the request of a party by the CALJ upon consideration of the positions of the parties or *sua sponte* by the Commission. See, Emergency Order.

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<sup>88</sup> 452 A.2d 86 (Pa. Cmwlth. 1982), *aff’d per curiam*, 482 A.2d 1272 (Pa. 1984) (Bell).

<sup>9</sup> 485 A.2d 1105, 1111 n.9 (Pa. 1984) (Joseph Horne).

<sup>10</sup> 322 A.2d 735, 737 (Pa. Cmwlth. 1974) (Baker).

<sup>11</sup> Bell Tel. Co. v. Pa. Pub. Util. Com., 452 A.2d 86, 89-91 (1982).

In *Joseph Horne*, the Commonwealth Court held that temporary interim rate increases improperly avoids the procedural and substantive protections of the Public Utility Code.<sup>12</sup> The Court determined as follows:

By the interaction of all these provisions, we believe, the legislature has provided separate but synchronized mechanisms by which utilities can seek general rates providing a long term reasonable return on their investment, immediate relief from fluctuations in fuel costs, short term rate increases to meet limited temporary problems and more general interim relief in extraordinary circumstances in the seven months during which a requested general rate increase can be suspended. **Together these sections fairly balance the need for protection of ratepayers [\*\*\*19] through meaningful Commission review of their concerns against the needs of utilities, immediate or otherwise.** The procedure used here improperly avoids the procedural and substantive protections of Sections 1308(e) and 1310(a) on [\*488] extraordinary and temporary rate increases and defeats the overall legislative scheme.<sup>13</sup>

The OCA submits that the Emergency Order fairly balances the need of protection of ratepayers through meaningful Commission review of their concerns against the needs of utilities, immediate or otherwise, by allowing specific, limited extensions to statutory deadlines due to the current extraordinary circumstances.

In *Baker*, the Commonwealth Court determined that the statutory scheme adopted in regard to Pennsylvania utility law permits the Commission to, upon the filing of tariffs and without notice and hearing, permit rates to become effective pending a decision concerning their lawfulness.<sup>14</sup> Section 1308(d) was amended in 1978 and 1984.<sup>15</sup> *Baker* was subsequently overturned by *Joseph Horne*.<sup>16,17</sup> The OCA submits that the Emergency Order provides a reasonable approach to extending statutory deadlines in light of the global pandemic.

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<sup>12</sup> 485 A.2d 1105, 1111 (1984).

<sup>13</sup> *Id.* (emphasis added).

<sup>14</sup> *Baker v. Pa. Pub. Util. Com.*, 14 Pa. Commw. 245, 250, 322 A.2d 735, 737 (1974)

<sup>15</sup> See 66 Pa. C.S. Section 1308(d); July 1, 1978 P.L.598, No. 116; July 6, 1984, P.L.602, No.123; Sept. 27, 1984 P.L.721, No.153; Dec. 21, 1984, P.L.1264, No.240.

<sup>16</sup> 485 A.2d 1105, 1109 (1984).

<sup>17</sup> Citing July 1, 1978 P.L. 598, No. 116.

The Commission's Emergency Order is based on the Governor's Proclamation of Disaster Emergency. The OCA notes that the Company appears to argue in their Petition that an extension to the statutory suspension period is "unconstitutionally confiscatory." See PAWC Petition at 12. In effect, PAWC's argument is against the Proclamation of Disaster Emergency and those arguments are not properly before the Commission.<sup>18</sup> Rather, the issue before Commission is whether the considerations discussed in the Emergency Order support extending the statutory suspension period by 45 days.

The Commission acknowledged in its Emergency Order that the closure of the Commission's office "presents many challenges for the Commission, the regulated community, and the public." Emergency Order at 1. 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.

Emergency Order at 2. The Commission's Emergency order indicates that its public service mission and the impact on affected stakeholders should be considered in determining whether a deadline should be modified. The OCA submits that necessity of extending statutory deadlines in light of the global pandemic was discussed and decided upon explicitly in both the Proclamation of Disaster Emergency and the Commission's Emergency Order.

In pleadings and on the record at the Prehearing Conference, the OCA and other parties showed conclusively that if the deadline were not modified, it would prevent the development of a full and complete record. In the OCA's Motion, the OCA noted that its office personnel are

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<sup>18</sup> The OCA notes that the Governor's Proclamation of Disaster Emergency has been upheld by the Supreme Court of Pennsylvania. See, Friends of Devito v. Wolf, 2020 Pa. LEXIS 1987.

working remotely and the OCA does not have its usual access to physical files, photocopying, U.S. mail, and support staff, among other services. Motion at 6.<sup>19</sup>

I&E's Answer to OCA's Motion noted that the closing of Commission offices renders it difficult for I&E, as a statutory party, to analyze and investigate the requested rate increases. I&E Answer at 4. At the Prehearing Conference, I&E further noted that, in addition to analysis of a new set of novel issues, I&E is working on personal devices, as laptops have not been issued to I&E personnel. Tr. at 30. Additionally, CAUSE-PA's Answer to OCA's Motion noted that all offices of counsel for CAUSE-PA are closed and that CAUSE-PA's ability to fully and appropriately investigate PAWC's filings and create a record for Commission review are hindered. CAUSE-PA Answer at 3.

At the Prehearing Conference, OSBA stated that it fully supported the OCA's motion for a forty-five day extension. Tr. at 32. OSBA further noted that their office is working remotely, PAWC's filings contain complex and novel issues, and that a forty-five day extension would ensure that the filings are adequately investigated. Tr. at 32-33. OSBA also noted that there are multiple base rate cases occurring which have had their schedules extended, creating a domino effect which supports the OCA's request for a forty-five day extension. Tr. at 33. Furthermore, the CALJ noted that the ALJ informed the CALJ of his position regarding the OCA's Motion during the Prehearing Conference. CALJ Order at 2.

Moreover, the OCA notes that the Commission's Emergency Order does not confer unlimited authority to ignore Pennsylvania law, but instead allows the CALJ to allow an extension of statutory deadlines of up to ninety days. The Emergency Order states:

Suspension, extension waiver or change of any regulatory, statutory or procedural deadlines shall not exceed ninety (90) days except upon expedited certification of

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<sup>19</sup> For example, the OCA's access to informal letters and informal complaints that the notice to customers indicated could be mailed to the Commission is delayed due to the closure of the Commission's office.

the question by the Chief Administrative Law Judge or Bureau Director to the Commission.

Emergency Order at 4 (ordering paragraph 5). Moreover, the limitations contained in the Governor's Proclamation of Disaster Emergency were given favorable treatment by the Pennsylvania Supreme Court:

We note that the Emergency Code temporarily limits the Executive Order to ninety days unless renewed and provides the General Assembly with the ability to terminate the order at any time. 35 Pa.C.S. § 7301(c). Moreover, the public health rationale for imposing the restrictions in the Executive Order, to suppress the spread of the virus throughout the Commonwealth, is a stop-gap measure and, by definition, temporary.<sup>20</sup>

The Commission did not override Section 1308(d) and it did not provide unlimited authority to ignore Pennsylvania law. On the contrary, the Commission's Emergency Order correctly addressed the Governor's Proclamation of Disaster Emergency and provided specific time-frames and procedures to extend statutory deadlines due to extraordinary circumstances and permitted extensions of up to ninety days. Emergency Order at 2, 4. Thus, limitations on the extension of statutory deadlines have been addressed by the Commission.

Further, the OCA did not request an unlimited extension, or even a ninety (90) day extension, to the statutory suspension period, but instead requested a forty-five (45) day extension, which the OCA believes is reasonable for PAWC's base rate cases. The OCA submits that the CALJ complied with the Commission's Emergency Order in determining that a forty-five day extension to the statutory suspension period was appropriate for the instant proceeding.

The OCA submits that there is sufficient evidence contained in the OCA's Motion, I&E's Answer to OCA's Motion, CAUSE-PA's Answer to OCA's Motion, the oral argument presented

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<sup>20</sup> Friends of Devito v. Wolf, 2020 Pa. LEXIS 1987 \*51.

by various counsel in support of the OCA's Motion during the Prehearing Conference, the Governor's Proclamation of Disaster Emergency, the Commission's Emergency Order, and the CALJ Order which support a forty-five day extension due to extraordinary circumstances. The COVID-19 pandemic impairs the OCA's ability to investigate PAWC's filing. Providing additional time to analyze the myriad of issues involved in this case is critical.

**C. PAWC's Offer to Voluntary Extend the Suspension Period to February 4, 2021 is Unreasonable**

Next, the Company argues that its 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. Petition at 14. As noted by PAWC, during the Prehearing Conference PAWC offered to extend the suspension period to February 4, 2021, provided that, if a settlement were achieved, the settlement rates could become effective before February 4, 2021. Petition at 14. The Company further argues that the Company's proposals are not complex. Petition at 15-16. PAWC argues that there is nothing in the Proclamation of Disaster Emergency that can be used to extend the statutory deadline in this proceeding by forty-five (45) days and granting the OCA's Motion violates substantive legal mandates that cannot be waived or suspended. Petition at 16-17.

The OCA submits that PAWC's request for a seven day extension to the statutory suspension period is unreasonable in light of extraordinary circumstances and the cases filed by PAWC. As noted in the OCA's Motion and by the other parties, 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. Motion at 6. Given the size of the proposed rate increases and the number

of customers affected, the OCA anticipated 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. Motion at 7. 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. Motion at 7.

The OCA submits that the Company's filings present some particular challenges and are complex, as they contain novel issues related to ratemaking and rate design. As discussed in the OCA's Motion, PAWC's filing includes proposals for multiyear rate increases under recently enacted legislation,<sup>21</sup> a novel regionalization and consolidation surcharge, and a pension tracker.<sup>22</sup> Motion at 6. The OCA further noted 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. See Motion at 6. In addition, as noted by the OCA in its Motion, given the financial and economic impact of COVID-19 on PAWC ratepayers, it is particularly important to ensure that the rates established in this proceeding are just and reasonable.<sup>23</sup> Motion at 6.

**D. PAWC's Proposed Modifications to Procedural Rules Must Be Denied.**

PAWC argues that if the Commission determines that the procedural schedule should extend 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. Petition at 17-20. PAWC further argues that an extension of the procedural schedule should not be conflated with an extension of the

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<sup>21</sup> Act 58 of 2018, codified at 66 Pa. C.S. § 1330(b).

<sup>22</sup> See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

<sup>23</sup> The OCA notes that the Company claimed that "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." Petition at 16. The OCA submits that the basis of its proposal for a forty-five day extension did not change during oral argument at the Prehearing Conference. Motion at 4-7.



suspension period mandated by Section 1308(d). Petition at 17. PAWC also requests that, 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. Petition at 19.

The OCA filed a Motion seeking extension of the statutory suspension period and did not instead file a motion requesting an extension of the procedural schedule. The CALJ issued his ruling granting the OCA's Motion at the Prehearing Conference and in his June 4, 2020 Order. The OCA submits that an extension of the procedural schedule, which was set at the Prehearing Conference following the CALJ's ruling granting the OCA's Motion, necessarily relates to the extension of the suspension period. In other words, an extension of the suspension period allows the parties and the ALJ more flexibility in setting a procedural schedule.

The OCA further notes that the Company's analysis regarding an alleged distinction between the Commission's ability to extend the procedural schedule and the Commission's inability to extend the suspension period is unreasonable in light of the Emergency Order and the realities of base rate proceedings. The Emergency Order is entitled *Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements* and discusses the authority and procedure related to extensions of statutory deadlines. The suspension period is a statutory deadline. The procedural schedule, on the other hand, is generally set at the Prehearing Conference by the presiding officer. The OCA submits that the CALJ properly granted the OCA's Motion extending the statutory suspension period by forty-five days based on the authority delegated to the CALJ under the Emergency Order.

The OCA further submits that the Company's request that the Commission allow the Company to receive approval of a recoupment surcharge in the event that the suspension period is extended beyond February 4, 2021 is unreasonable. In support of the Company's proposed recoupment surcharge, the Company cites to the 2014 base rate cases filed by the FirstEnergy Companies.<sup>24</sup> In the 2014 FirstEnergy Base Rate Cases, the parties voluntarily agreed to an extension of the statutory suspension period on the condition that the FirstEnergy Companies be permitted to recoup any lost revenue from the date of the original expiration of the suspension period through the date the Commission made the new rates effective by approving the compliance filing.<sup>25</sup> The cases, however, were settled prior to the end of the original expiration of the statutory suspension period and the surcharge mechanism taking effect. The OCA submits that a voluntary agreement in the context of the 2014 base rate cases filed by the FirstEnergy companies is dissimilar to circumstances presented in the instant proceeding due to the positions of the parties, the issuance of the Emergency Order, and the ongoing global pandemic.

The Company's proposed recoupment surcharge contained in its Petition has not been investigated by the parties<sup>26</sup> or ruled upon by the Presiding Officer or the CALJ.<sup>27</sup> There is no statutory right to a rate increase and the Commission has the authority to deny any increase that is

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<sup>24</sup> 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, page 5 (collectively, 2014 FirstEnergy Base Rate Cases).

<sup>25</sup> *Id.*

<sup>26</sup> It should be noted that at the Prehearing Conference, OSBA noted that it was "happy to hear that Pennsylvania-American Water Company is no longer requesting a surcharge as a condition, because we would have also opposed that." Tr. at 33.

<sup>27</sup> During the Prehearing Conference, the Company stated that it was voluntarily withdrawing its proposal for the recoupment surcharge. Tr. at 23-24. After the CALJ made his ruling on the OCA's Motion during the Prehearing Conference, the Company noted that the Company's voluntary withdrawal of the recoupment surcharge was linked to its proposal and agreement regarding its voluntary offer to extend the statutory suspension period to February 4, 2021 and that the Company reserved its right to revisit the surcharge issue. Tr. at 56.

not just and reasonable. The OCA submits that the Company's request for a recoupment surcharge contained in their Petition should be denied.

As to PAWC's request that, in the event that the Commission "extends the procedural schedule" beyond February 4, 2021, it should direct 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 the opposing parties' direct testimony must be served, should be denied. See Petition at 19. The Company's request for this restrictive modification of discovery procedure was not discussed at the Prehearing Conference by the parties when other modifications to discovery were discussed after the CALJ's ruling on the OCA's Motion, and ruled upon by the Presiding Officer. The OCA submits that the Company's proposed restriction on discovery requests are especially inappropriate given the current extraordinary circumstances.

For the reasons discussed above, the Company's proposed procedural modifications should be denied.

#### IV. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission deny the Company's Petition for Reconsideration of Staff Action. A forty-five (45) day suspension is necessary to meet the mounting challenges resulting from the COVID-19 pandemic. It will also ensure that the OCA and all parties have sufficient time and resources to adequately investigate and support their positions in this proceeding and develop a full and complete record for the Commission's consideration.

Respectfully submitted,

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Dated: July 6, 2020  
\*290914

## Appendix A

**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.<sup>1</sup> 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](mailto:rchiavetta@pa.gov). If no timely request is made, this Order will be deemed a final action of the Commission.

---

<sup>1</sup> Forty-five (45) days from January 28, 2021 falls on Sunday, March 14, 2021. Hence, Monday, March 15, 2021 is computed as the 45<sup>th</sup> 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](mailto: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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May 28, 2020

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

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

Dear Secretary Chiavetta:

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

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

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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

Enclosures:

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

\*289097

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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NOTICE TO PLEAD

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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

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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

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**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, 2020<sup>1</sup>, 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

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<sup>1</sup> 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.”<sup>2</sup> 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).<sup>3</sup> Under the Commission's suspension orders, new rates will now take effect on January 28, 2021.

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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> <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.<sup>5</sup> 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.<sup>6</sup>

PAWC filed its complex base rate cases, involving multi-year rate plans under recently enacted legislation,<sup>7</sup> a novel regionalization and consolidation surcharge, and a pension tracker<sup>8</sup>, 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.<sup>9</sup> 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."<sup>10</sup> 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.<sup>11</sup>

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<sup>5</sup> See 66 Pa. C.S. § 1308(d).

<sup>6</sup> 66 Pa. C.S. § 331(d).

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

<sup>8</sup> See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

<sup>9</sup> Proclamation of Disaster Emergency at 2.

<sup>10</sup> Emergency Order at 1.

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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.

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<sup>12</sup> Emergency Order at 3 (emphasis in original).

<sup>13</sup> 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,<sup>14</sup> a novel regionalization and consolidation surcharge, and a pension tracker.<sup>15</sup> 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.<sup>16</sup> 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.

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

<sup>15</sup> See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

<sup>16</sup> 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  
\*288967

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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PA Attorney I.D. # 320580  
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## CERTIFICATE OF SERVICE

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

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

Dated this 28<sup>th</sup> day of May 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: July 6, 2020  
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Signature: /s/ Harrison W. Breitman  
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## CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Pennsylvania-American Water Company's Petition for Reconsideration of Staff Action, 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 6<sup>th</sup> day of July 2020.

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