



July 8, 2020

VIA E-File

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

Re: Pa. PUC v. Pennsylvania American Water Company, Docket Nos. R-2020-3019369
(Water); R-2020-3019371 (Wastewater)

**Answer of CAUSE-PA in Opposition to Pennsylvania American Water Company's
Petition for Reconsideration of Staff Action**

Dear Secretary Chiavetta,

Please find the attached **Answer of CAUSE-PA in Opposition to Pennsylvania
American Water Company's Petition for Reconsideration of Staff Action**.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Ria M. Pereira".

Ria M. Pereira, Esq.

Counsel for CAUSE-PA

CC: Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**ANSWER OF CAUSE-PA IN OPPOSITION TO PENNSYLVANIA AMERICAN
WATER COMPANY’S PETITION FOR RECONSIDERATION OF STAFF ACTION**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)¹, through its counsel at the Pennsylvania Utility Law Project, hereby files this Answer in Opposition to the Petition for Reconsideration of Staff Action filed by the Pennsylvania American Water Company (PAWC or the Company) on June 24, 2020 (Petition for Reconsideration).

On March 20, 2020, the Commission issued an Emergency Order that provided for the suspension, extension, waiver, or change of regulatory, statutory, or procedural deadline.² The Commission directed that, in pertinent part, that:

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.³

¹ CAUSE-PA has standing to file an Answer to PAWC’s Petition, pursuant to 52 Pa. Code § 5.61(e), as it is an active party with full intervenor status in this docketed proceeding. CAUSE-PA’s standing to intervene was therefore previously established in this docketed proceeding when Administrative Law Judge Conrad A. Johnson granted CAUSE-PA’s Petition to Intervene in the proceeding.

² Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262, at 2 (March 20, 2020).

³ Id. at 5.

In providing for modification to statutory or procedural deadlines, the Commission acknowledged the “unprecedented nature of this emergency” and that it was “aware that some deadlines or obligations may hinder the public service mission of the Commission and its affected stakeholders.”⁴

On April 29, 2020, PAWC submitted a rate filing, Supplement No. 19 to its Tariff Water PA PUC No. 5, and Supplement No. 19 to its Tariff Wastewater PA PUC No. 16. PAWC proposes a multi-year increase to its water and wastewater rates pursuant to 66 Pa. C.S. § 1308(d). PAWC proposes to increase the Company’s total annual operating revenues by \$138.6 million over two years.

On May 28, 2020, the Office of Consumer Advocate (OCA) filed an Expedited Motion for an Extension of the Statutory Suspension Period of PAWC’s Base Rate Proceedings (OCA’s Expedited Motion) in which it requested that the statutory suspension period in this matter be extended by 45 days – half of the period of extension authorized by the Commission’s March 20 Emergency Order. On June 1, 2020, CAUSE-PA filed an Answer in Support of OCA’s Expedited Motion. On June 4, 2020, a Prehearing Conference was held in this matter. At the conference, Chief Administrative Law Judge Charles E. Rainey (CALJ Rainey or the CALJ) and ALJ Johnson heard oral argument from the parties, after which he granted OCA’s Expedited Motion.

On June 24, 2020, PAWC filed the instant Petition for Reconsideration of Staff Action and requested that the Commission set aside the CALJ’s Order, accept PAWC’s offer to voluntarily extend the suspension period to February 4, 2021, and direct the ALJ to establish a

⁴ Id. at 2.

procedural schedule consistent with this new suspension period. In the alternative, PAWC requested that, if the Commission were to extend the procedural schedule beyond February 4, 2020, the Commission 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 direct that the ALJ set a date-certain for ending discovery requests related to the Company's direct case.

As explained below, CAUSE-PA opposes the Petition for Reconsideration of the CALJ's June 4, 2020 Order, which granted the OCA's Motion for Extension of the Statutory Period in the instant matter. As more fully discussed below, CAUSE-PA avers that, after consideration of the parties' position and conferral with Administrative Law Judge (ALJ) Conrad A. Johnson, CALJ Rainey properly granted OCA's request for a 45 day extension of the statutory suspension period pursuant to authority conferred by the March 20 Emergency Order by the Pennsylvania Utility Commission's (PUC or the Commission). CAUSE-PA avers that extension of the statutory suspension period by 45 days will allow the parties to more fully investigate the rate increases proposed by PAWC in light of the unprecedented challenges faced by both parties and consumers as a result of the COVID-19 pandemic.

In support of its Answer in Opposition to the Petition for Reconsideration, CAUSE-PA asserts the following:

II. BACKGROUND

1. Admitted.
2. Admitted.

3. Admitted. By way of further answer, it is admitted that the Commission's March 20 Emergency Order as a result of the COVID-19 pandemic, adopted broader electronic filing practices and ceased paper service on the Commission or by the Commission on others during the pendency of the emergency.⁵ The March 20 Emergency Order also provided for the suspension, extension, waiver, or change of regulatory, statutory, or procedural deadlines not to exceed 90 days except upon expedited certification of the question by the CALJ or Bureau Director to the Commission.⁶
4. Admitted in part. CAUSE-PA admits that, on March 30, 2020, PAWC filed with the Commission a Notice of Intent to file a general rate increase by April 29, 2020, that the Commission assigned the above-referenced docket numbers to the case, and that PAWC had last filed a general rate increase on April 28, 2017. CAUSE-PA is without knowledge or information sufficient to form a belief as to how long PAWC had been working to develop extensive supporting data for its proposed rate increase. CAUSE-PA is nevertheless deeply concerned that PAWC has elected to propose a rate increase during the COVID-19 pandemic. While the extent of the economic fall-out from the pandemic response is not yet known, it is certain to cause lasting economic devastation – particularly for low income and other vulnerable Pennsylvanians.⁷ A steep increase in rates such as the increase proposed by PAWC would be disproportionately harmful to low-, fixed-, and moderate-income

⁵ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262, at 5 (March 20, 2020).

⁶ Id.

⁷ See Federal Reserve Syst. Bd. of Gov., Report on the Economic Well-Being of US Households in 2019, Featuring Supplemental Data from April 2020, at 53 (May 2020), <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf> (reporting that 39% of households with income below \$40,000 reported a job loss in March. This is much higher than the reported 13% job loss for all adults – though both figures are staggering).

households that have suffered disproportionate economic and health impacts associated with the pandemic and the pandemic response.

5. Admitted.
6. Admitted. By way of further answer, in paragraph 2 of the Commission’s Suspension Order entered on May 21, 2020, the Commission indicated that PAWC’s “proposed Supplement No. 19 to Tariff Water–PA P.U.C. No. 5 is suspended by operation of law until January 28, 2021, ***unless otherwise directed by Order of the Commission.***” (emphasis added) (Suspension Order at 2).
7. Admitted. By way of further answer, on May 12, 2020, CAUSE-PA filed a Petition to Intervene and Answer in this matter. In the Prehearing Order entered on June 15, 2020, the Honorable Conrad A. Johnson granted CAUSE-PA’s Petition to Intervene, granting CAUSE-PA full intervenor status in this proceeding. (Prehearing Order at 10).
8. Admitted.
9. Admitted.
10. Admitted. By way of further answer, while counties in Pennsylvania continue to incrementally open businesses and government locations as a result of Governor Wolf’s phased Red-Yellow-Green plan, consumers continue to be financially impacted by the COVID-19 pandemic.⁸ Low and moderate income consumers, who often represent low-wage, hourly workers have been particularly hard hit by the pandemic and continue to be economically impacted as the pandemic continues.⁹

⁸ See, e.g., Moselle, Aaron. Pa. coronavirus recovery: Unemployment rate dips; Gov. Wolf says Philly-area can go ‘green’ on June 26, PBS: WHYY (June 19, 2020), <https://whyy.org/articles/pa-coronavirus-recovery-unemployment-rate-dips-remains-high/>; Doughty, Nate. Pennsylvania’s unemployment claims jump 12%, 56,000 filed last week, Pittsburgh Business Times (June 25, 2020), <https://www.bizjournals.com/pittsburgh/news/2020/06/25/pa-unemployment-june-25.html>.

⁹ See Federal Reserve Syst. Bd. of Gov., Report on the Economic Well-Being of US Households in 2019, Featuring Supplemental Data from April 2020, at 53 (May 2020); see also, e.g., [Who is Most at Risk of the Coronavirus](#)

11. Admitted.

III. PAWC’S PETITION FOR RECONSIDERATION OF STAFF ACTION SHOULD BE DENIED, AS THE CALJ WAS WITHIN HIS AUTHORITY TO GRANT OCA’S EXPEDITED MOTION FOR A 45 DAY EXTENSION OF THE STATUTORY SUSPENSION PERIOD IN THIS MATTER.

A. The CALJ was within his authority to extend the statutory suspension periods pursuant to the Commission March 20 Emergency Order.

12. Admitted in part. By way of further answer, CAUSE-PA agrees that Section 1308(d) of the Public Utility Code provides that, whenever a utility files a tariff containing rates that constitute a general rate increase, the Commission, after notice and hearing, may vote to issue an order allowing the tariff to become effective. CAUSE-PA does not contest the plain language of Section 1308(d), which indicates that, 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.” 66 Pa. C.S. § 1308(d). However, CAUSE-PA contends that the language of Section 1308(d) cannot be taken in isolation, but instead must be considered in conjunction with the Commission’s March 20 Emergency Order and the March 6 Executive Order issued by Governor Wolf. In pertinent part, the March 6 Executive Order provides:

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.

Crisis: 24 Million of the Lowest-Income Workers, Politico (March 21, 2020), <https://www.politico.com/interactives/2020/coronavirus-impact-on-low-income-jobs-byoccupation-chart/>.

On March 20, 2020, the Commission subsequently issued an Emergency Order in response to the pandemic which authorized the Chief ALJ in pending rate case litigation to establish reasonable deadlines after consideration of the individual circumstances of the case and the position of the parties and the ALJ.¹⁰ As such, the March 6 Executive Order and March 20 Emergency Order granted the Chief ALJ authority to establish deadlines that were necessary to cope with the effects of the pandemic. At the Prehearing Conference in this matter, OCA, CAUSE-PA, and the other parties in this matter argued that extending the suspension period by 45 days was necessary in light of the vast challenges consumers faced as a result of COVID-19 – as well as the practical challenges associated with litigation of a complex rate case without full access to office resources. After hearing from the parties, including PAWC, the Chief ALJ determined, pursuant to the March 20 Emergency Order, it was proper to grant OCA’s Motion and extend the statutory suspension period by 45 days.

13. Admitted in part. CAUSE-PA does not contest the plain language of the Bell Tel. Co. case, though we assert that the opinion in this case speaks for itself.¹¹ While CAUSE-PA recognizes that the Commission’s extension of the suspension period in that case was found to violate Section 1308(d),¹² CAUSE-PA contends that Bell Tel. Co. is distinguishable from the present matter. Bell Tel. Co. does not analyze the effect of an emergency order on statutory suspension periods. Indeed, Bell Tel. Co. was decided years before the present pandemic, Governor Wolf’s March 6 Executive Order, or the Commission’s March 20 Emergency Order – and did not involve circumstances comparable to the current

¹⁰ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262, at 2 (March 20, 2020).

¹¹ Bell Tel. Co. v. Pa. P.U.C., 452 A.2d 86 (Pa. Cmwlth. 1982), aff’d per curiam, 482 A.2d 1272 (Pa. 1984).

¹² See Bell Tel. Co. v. Pa. P.U.C., 452 A.2d at 91.

unprecedented emergency which continues to unfold.¹³ As such, Bell Tel. Co. does not contemplate the effects of these Orders on Section 1308(d). CAUSE-PA contends that pursuant to these Orders, the Chief ALJ was appropriately vested with the authority to extend the statutory suspension period under 1308(d).

14. Admitted in part. Bell Tel. Co. speaks for itself, and CAUSE-PA does not contest the plain language of the case. However, as indicated above, CAUSE-PA does not believe that Bell Tel. Co. is controlling as to the present matter and is readily distinguishable based on the issuance of Governor Wolf's March 6 Executive Order and the March 20 Emergency Order.
15. Admitted. Again, CAUSE-PA does not contest the plain language of Bell Tel. Co., which speaks for itself.
16. Admitted. CAUSE-PA does not contest the plain language of Bell Tel. Co., but instead believes that the present matter is readily distinguishable from Bell Tel. Co., which does not contemplate the effects on an emergency order on the statutory suspension period.
17. Admitted. The plain language of Joseph Horne Co. v. Pa. PUC speaks for itself.¹⁴ Similar to Bell Tel. Co., Joseph Horne Co. was determined without taking into consideration the effect of any emergency or modifying Order on 1308(d), let alone the Commission's March 20 Order, which delineate clear authority to the Chief ALJ to establish reasonable deadlines in light of the COVID-19 pandemic.

¹³ Indeed, in that case, Bell Tel. Co. filed revised tariffs with the PUC, who initially suspended the proposed tariffs for the maximum period permitted under Section 1308(d). The PUC determined that a smaller rate increase was proper, and ordered petitioner to file revised tariffs and further ordered that the rate increase be suspended for an additional 21 days. The Commonwealth Court found that such a delay past the statutory deadline violated Section 1308(d). See Bell Tel.Co. v. Pa. P.U.C., 452 A.2d 86 (Pa. Cmwltth. 1982), aff'd per curiam, 482 A.2d 1272 (Pa. 1984).

¹⁴ See Joseph Horne Co. v. Pennsylvania Public Utility Com., 485 A.2d 1105, 1106-1107 (Pa. 1984). In that case, Joseph Horne Co. challenged a PUC grant of a rate increase pending final action related to a request for a general rate increase. The Pennsylvania Supreme Court held that the PUC violated Section 1310 (a) when it allowed an interim rate increases to become effective, given that there had been a request for a general rate increase.

18. Admitted in part, denied in part. Again, CAUSE-PA does not contest the plain language of Joseph Horne Co. In this case, the Commonwealth Court found that a temporary interim rate should be disallowed based on amendments to the Public Utility Code made in 1978 which added Section 1308(d) and 1310.¹⁵ As PAWC indicates, the Pennsylvania Supreme Court found that these 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.”¹⁶ Again, CAUSE-PA asserts that Joseph Horne Co. is distinguishable from the present case, as the court in Joseph Horne Co. did not analyze the effects of an emergency order on the timeline set forth in Section 1308(d) – nor was the delay created as a result of an unprecedented pandemic – and prolonged, widespread closure of businesses across the state. However, even if the Commission were to find that Joseph Horne Co. was applicable to the present matter, based on the analysis set forth in Joseph Horne Co., CAUSE-PA submits that the March 20 Emergency Order provides a mechanism by which to fairly and properly balance the needs of utilities to recover costs against the needs of ratepayers during a time of economic upheaval.¹⁷ As such, CAUSE-PA believes that the CALJ properly granted OCA’s Expedited Motion pursuant to the March 20 Emergency Order.
19. Admitted in part, denied in part. CAUSE-PA admits that Bell Tel. Co. and Joseph Horne Co. reaffirm the seventh-month statutory limit on suspension of a general rate increase. However, as previously explained, Bell Tel. Co. and Joseph Horne Co. are distinguishable from the

¹⁵ 485 A.2d 1105, 1111 n.9, 1109-1110 (Pa. 1984).

¹⁶ Id.

¹⁷ See Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order, Docket No. M-2020-3019262, at 2 (March 20, 2020), which in part state that, in pending rate case litigation, the CALJ is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. As indicated, in the present case, the CALJ heard from the interested parties, including the Company, before granting OCA’s Expedited Motion.

instant case, and do not take into account the effects of the Commission’s March 20 Emergency Order on Section 1308(d) – or the current unprecedented emergency. CAUSE-PA denies PAWC’s characterization that the suspension period in this matter is being “unilaterally waived or extended by the Commission.” (PAWC Pet. at para. 19). To the contrary, the Commission’s March 20 Emergency Order allowed for the CALJ to extend statutory deadlines up to 90 days - in line with the Governor’s March 6 Executive Order, which was extended for an additional 90 days on June 3, 2020. The CALJ granted OCA’s Expedited Motion based on ample authority pursuant to such orders. Moreover, as we will explain in further detail below, while retroactive recoupment has been used on a limited basis in the past, CAUSE-PA asserts it is improper to grant recoupment in the present matter, given the economic hardship faced by consumers as a result of the pandemic.

B. The March 6 Executive Order and the March 20 Emergency Order Modify the Requirements of Section 1308(d)

20. Admitted in part, denied in part. While the OCA’s Motion speaks for itself, CAUSE-PA submits that the CALJ was within his authority granted by the Commission’s March 20 Emergency Order when he extended the statutory suspension period by 45 days.
21. Admitted in part, denied in part. CAUSE-PA admits to the plain language of Sections 7301(f)(1) and 7308(a) of the Emergency Management Code, as well as the Governor’s March 6 Executive Order. This language speaks for itself. While it appears from the plain language of OCA’s Expedited Motion that OCA relied, in part, on such provisions when requesting a 45 extension to the statutory suspension period, the OCA relied on a number of other authorities in its Expedited Motion, including the Commission’s March 20 Emergency Order.

22. Admitted in part, denied in part. CAUSE-PA admits that the March 6 Executive Order and the Emergency Management Code do not confer *unlimited* authority to ignore duly-enacted Pennsylvania law. As previously noted, the March 6 Executive Order suspends “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.” As such, the Commission’s March 20 Emergency Order, in line with the grant of authority in the Governor’s March 6 Executive Order, provided the Commission with broad authority to set reasonable deadlines in light of the pandemic.
23. Admitted in part, denied in part. CAUSE-PA does not deny that the suspension periods established by statute are characterized in Bell Tel. Co. and Joseph Horne Co. as entailing substantive rights of utilities and consumers. As previously noted, the case law cited by PAWC is not controlling, and does not contemplate the effects of an emergency order on Section 1308(d). Instead, CAUSE-PA contends that the Commission’s March 20 Emergency Order, as well as the March 6 Executive Order, granted the Commission broad authority to determine reasonable timelines, and to suspend rules of regulations if strict compliance would hinder response to the pandemic.
24. Denied. CAUSE-PA asserts that strict compliance with Section 1308(d) would prevent, hinder, and delay necessary action in coping with pandemic. While PAWC claims that the Commission can address the impact of the COVID-19 pandemic by putting in place “procedures to enforce social distancing, including the use electronic filing and service and telephonic and web-enabled hearings[,]” CAUSE-PA contends that PAWC fails to

adequately grasp the broad effects of the pandemic on consumers' lives. The profound economic impact of the pandemic on consumers cannot adequately accounted for by simply putting in place social distancing measures for proceedings. Consumers across Pennsylvania, especially vulnerable low and moderate income consumers, continue to be profoundly impacted by the COVID-19 pandemic.¹⁸ A critical component to determine whether proposed rates are just and reasonable is an examination whether the rates charge are affordable for consumers in service territories. Extension of the statutory suspension period is necessary to properly evaluate the effects of the pandemic on the long-term economic health of PAWC's service territory. Without such an extension, parties would not be able to adequately investigate whether PAWC's proposed rate increases are just and reasonable given the continued effects of the pandemic.

As CAUSE-PA and OCA argued, the statutory suspension period prescribed by 1308(d) would limit the ability of the parties to adequately investigate the Company's proposed rate increase. Like several of the parties to the litigation, the offices for counsel for CAUSE-PA, the Pennsylvania Utility Law Project, are closed, with counsel only able to access their offices on a very limited bases. CAUSE-PA continues to be concerned that such limitations will prevent counsel for CAUSE-PA from adequately developing a record if strict compliance with the statutory suspension period is required. CAUSE-PA is also concerned that the need to investigate PAWC's filings in detail is especially crucial, given that COVID-19 may have affected the justness and reasonableness of PAWC's proposal, the ability for

¹⁸ See, e.g., Moselle, Aaron. Pa. coronavirus recovery: Unemployment rate dips; Gov. Wolf says Philly-area can go 'green' on June 26, PBS: WHYY (June 19, 2020), <https://whyy.org/articles/pa-coronavirus-recovery-unemployment-rate-dips-remains-high/>; Doughty, Nate. Pennsylvania's unemployment claims jump 12%, 56,000 filed last week, Pittsburgh Business Times (June 25, 2020), <https://www.bizjournals.com/pittsburgh/news/2020/06/25/pa-unemployment-june-25.html>.

consumers to afford water and wastewater service, and the information PAWC provided in its initial tariff filings.

25. Denied. As previously indicated, CAUSE-PA disagrees with PAWC's characterization that extending the suspension period in this matter violates statutory mandate designed to protect the utilities substantive rights. Instead, CAUSE-PA asserts that the CALJ was well within the authority prescribed by the March 20 Emergency Order when he granted the additional 45 day extension of the statutory suspension period. Further, while PAWC argues that the Commission, on "many occasions" has 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," the reasonableness of such rate recovery must be considered. As previously described, Pennsylvanians continue to feel deep economic repercussions as a result of the pandemic, with the most vulnerable customers often being the hardest hit by the economic fallout from the pandemic. To ask consumers to bear an additional rate increase in the form of a recoupment charge on top of the steep rate increases that PAWC proposes in its tariff filings would pose an insurmountable burden to many consumers who have already been economically disadvantaged as a result of the pandemic.

26. Denied. As previously explained, the CALJ properly granted OCA's Motion to extend to statutory suspension period in this matter pursuant to authority conferred by the Commission in its March 20 Emergency Order. While neither the Commission's Emergency Order nor the Governor's Executive Order authorize "wholesale departure" from the mandates of law, such orders provide the CALJ clear authority to extend the statutory suspension period pursuant to 1308(d).

C. PAWC's Offer to Voluntarily Extend the Suspension Period to February 4, 20221 does not provide sufficient time to address the issues in this case and properly create a developed records for review.

27. Admitted.

28. The averments of this paragraph contain conclusions of law and PAWC's summarization of OCA's Expedited Motion to which no response is necessary. To the extent that a response is necessary, CAUSE-PA asserts that OCA's Expedited Motion speaks for itself.

29. Denied. CAUSE-PA agrees with OCA that PAWC's rate filings contain several complex issues related to PAWC's rate structure and design. PAWC proposes a multi-year increase to its water and wastewater rates,¹⁹ as well as novel surcharge and pension tracker proposals.²⁰ Without granting an extension of the statutory suspension in this matter, parties would not be given adequate opportunity to investigate PAWC's proposals and the effect of those proposals on consumers.

30. Denied. The Company alleges that its rate filings are not complex as the two-year rate plan is "only one year beyond what would otherwise be deemed the fully projected future test year (FPFTY) in this case." Contrary to PAWC's assertions, a proposal that extends past the FPFTY must be carefully evaluated in order to determine whether such rates are just and reasonable. The complexities of this novel rate design proposal are compounded by the uncertain economic repercussions that continue to spread through Pennsylvania communities as a result of COVID-19. It is essential that parties are given an adequate opportunity to investigate the full extent and implications of PAWC's rate filings through the additional suspension of the statutory suspension period.

¹⁹ See PAWC St. 1 at 16: 14-17.

²⁰ See PAWC Filing, Vol. I, Tab 2 (Statement of Reasons).

31. Denied. The Company further alleges that its 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.” CAUSE-PA denies that the effects of such rate mechanisms on consumers has been established. To the contrary, given the continued economic upheaval as a result of the pandemic, it is crucial to determine whether the Company’s proposed rate making mechanisms are just and reasonable. In order to determine to long-term impact of COVID-19 on such proposals, it is essential that the 45 day extension of the statutory suspension period be upheld.
32. Denied in part. CAUSE-PA asserts that OCA’s Expedited Motion speaks for itself. However, CAUSE-PA denies PAWC’s assertion that OCA changed the basis for its proposal during oral argument in this matter. Similarly, in its Answer in Support of OCA’s Motion filed on June 1, 2020, CAUSE-PA asserted that extension of the statutory suspension period was necessary, given not only the additional constraints faced by counsel for CAUSE-PA as a result of the pandemic, but also the need to fully investigate the COVID-19 pandemic’s effects on consumers in PAWC’s service territory and their ability to bear the proposed rate increases.²¹
33. Denied in part. CAUSE-PA supports temporary measures to assist customers during the pendency of the pandemic, as well as the parties engaging in a collaborative dialogue to find additional ways to assistance customers affected by COVID-19. However, contrary to the Company’s assertions, further investigation is needed to adequately evaluate whether PAWC’s proposed changes to its low income assistance programs are adequate to remediate

²¹ Pa. PUC v. Pennsylvania American Water Company, Answer of CAUSE-PA in Support of OCA’s Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania American Water Company’s Base Rate Proceedings, Docket Nos. R-2020-3019369, R-2020-3019371 (Answer filed June 1, 2020).

the effects of the proposed rate increase to low income consumers, especially given the increased economic impact of the pandemic. Initial review of PAWC's tariff filings suggest that PAWC's proposed changes to its low income programs are not "substantial" and are in fact inadequate to remediate the effects of the proposed rate increase on low income consumers – threatening the ability of thousands of Pennsylvania water and waste water customers to stay connected to service which is essential to the health and welfare of both individuals and the broader community.²² In order to properly evaluate the effects of PAWC's proposal, including its proposed changes to its low income programs, it is essential that the statutory suspension period be extended by the 45 day period proposed by the OCA. As previously indicated, granting OCA's Motion was within the proper authority of the CALJ pursuant to authority conferred by the Commission's March 20 Emergency Order and the Governor's March 6 Executive Order. Rather than an "open-ended conferral of power to block or delay recovery of legitimate business costs," these Orders provided precise authority in order to mitigate severe and unjust effects on consumers as a result of strict adherence to certain rules and regulations during an unprecedented time of economic uncertainty.

D. If the Commission properly determines that the procedural schedule should be extended beyond February 4, 2020, PAWC should not be entitled to charge the rates established in the present tariff filings as of the of the Section 1308(d) suspension period.

34. Admitted in part, denied in part. It is admitted that the Commission in the past has extended the procedural schedule beyond the end of the statutory suspension period in compliance with the Public Utility Code. CAUSE-PA denies that the CALJ conflated the extension of the

²² PAWC currently provides an 85% discount on the service charge for water customers at or below 150% of the Federal Poverty Level (FPL) and a 20% discount on the total bill for wastewater customers at or below 150% the FPL. (PAWC St. No. 4 at 46: 14-17). PAWC proposes to add a 10% discount to the volumetric charge for water customers in addition to the current 85% discount on the service charge and to increase the wastewater total bill discount from 20% to 30% of the total bill. (*Id.* at 46: 20-23; 47: 1-2).

procedural schedule with the extension of the suspension period.²³ CAUSE-PA further denies that utilities must be granted an “unqualified” right to begin to recover increased revenues under then-adjudicated rates at the end of the suspension period prescribed by 1308(d) in cases where procedural schedules are extended past the statutory suspension periods. Instead, the additional proposal for retroactive recovery must be examined in conjunction with the Company’s proposed rate increase to determine whether it is just and reasonable for consumers to bear the burden of an additional charge on top of rate increases.

35. Admitted in part, denied in part. It is admitted that, under routine circumstances, the Commission generally issues a final order before, or 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 design of rates for the different rate classes. When the Commission is operating as normal, CAUSE-PA agrees that rate increase requests generally operate as described by PAWC. However, this is not ‘business as usual.’ Instead, widespread closures and economic disruptions continue even as Pennsylvania reopens in phases under the Governor’s direction. As previously described, consumers continue to face the harsh economic consequences of the pandemic, with the most vulnerable consumers being disproportionately disadvantaged the COVID-19’s economic toll. It is unreasonable and unjust that consumers who are already struggling as a result of COVID-19 must bear the burden of an extra recoupment charge in addition to the rate increases proposed by PAWC.
36. Admitted in part, denied in part. It is admitted that in August 2014, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company filed concurrent base rate cases requesting general rate increases.²⁴ It is

²³ Indeed, OCA’s Motion sought an extension of the statutory suspension period in this matter.

²⁴ See Pa. P.U.C. v. West Penn Power Co., Docket Nos. R-2014-2428742, et al; Pa. P.U.C. v. Pennsylvania Electric

further admitted that the parties in the case reached an agreement to extend the procedural schedule by sixteen days, upon the condition that, at the time the compliance filings were made in the case, the companies would be permitted to implement a surcharge to recoup lost revenues during the period from the original suspension period through the effective date of the Companies' compliance filings.²⁵ The recoupment in these 2014 base rate filings was made pursuant to agreement of the parties.²⁶ By contrast, in its instant Petition for Reconsideration, PAWC requests that the Commission find CALJ Rainey did not have proper authority to grant a 45 day extension of the statutory suspension period in this matter – despite the Commission's Emergency Order granting authority to extend statutory deadlines. As such, the agreement made in the cited 2014 base rate proceedings is distinguishable from the present matter.

37. Denied. CAUSE-PA denies that, if the Commission properly authorizes an extension of the statutory suspension period beyond the suggested February 4, 2020 date suggested by PAWC, the Commission might properly approve a recoupment surcharge that permits the Company to recover the increased revenue that its then-approved rates would produce as if they had been made effective from the end of the Section 1308(d) suspension period. Again, such a recoupment surcharge would compound the economic impact of an increase in basic utility services during a time where many consumers – especially low and moderate income consumers – have faced numerous economic challenges as a result of the pandemic. If the Commission authorizes a 45 day extension of the statutory suspension period in this matter,

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.

²⁵ See *id.*

²⁶ See, e.g., Pa. P.U.C. v. Metropolitan Edison Co., Recommended Decision, Docket Nos. R-2014-2428745 et al., at 4 (Rec. Dec. issued Mar. 9, 2015).

in recognition of the novel and continued burdens faced by consumers during these trying times, it would be counterintuitive and punitive for the Commission to order consumers to bear the burden of an additional recoupment fee.

38. Denied. If the Commission extends the procedural schedule beyond February 4, 2021, CAUSE-PA is firmly opposed to PAWC's proposal that the ALJ be directed to 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. CAUSE-PA disagrees with PAWC's contention that the parties should only be able to conduct the same magnitude of discovery they would have conducted under a normally-applicable schedule if the parties did not have the difficulties of remote work. First, it is precisely because of the limitations inherent in remote work that the parties' timeline for discovery should not be limited. It is crucial that the parties are given adequate opportunity to investigate PAWC's rate filings, even with the challenges caused by remote work. Second, extension of the statutory suspension period is also crucial so that parties have an adequate opportunity to investigate the short and long term impacts caused by the pandemic – and the compounding impact that a multi-year rate increase will have on those households. CAUSE-PA does not seek “license to inflate the total volume of discovery.” Instead, CAUSE-PA believes that adequate and thorough investigation is needed in order to fully understand how the pandemic has affected consumers lives and livelihoods, and their ability to bear the rate increases proposed by PAWC. CAUSE-PA is concerned at the suggestion that it is appropriate to curtail the parties' ability to investigate its rate filings, or to cut off parties' access to information necessary to conduct such an investigation upon a

date certain, rather than to work cooperatively with the other parties in order to better understand how its customers have been harmed by the continued effects of COVID-19.

WHEREFORE, for the foregoing reasons, CAUSE-PA respectfully requests that the Commission deny PAWC's Petition for Reconsideration of Staff Action and affirm the decision by the Chief ALJ to extend the statutory suspension period in this matter by 45 days.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT

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July 8, 2020

Verification

I, Elizabeth R. Marx, on behalf of and as counsel for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), hereby state that the facts contained in the foregoing Answer of CAUSE-PA are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, 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 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in blue ink, reading "Elizabeth R. Marx", is positioned above a horizontal line.

Elizabeth R. Marx, Esq.
Counsel for CAUSE-PA

Date: **July 8, 2020**

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I hereby certify that I have this day served copies of the **Answer of CAUSE-PA in Opposition to Pennsylvania American Water Company's Petition for Reconsideration of Staff Action** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission's Emergency Order issued on March 20, 2020.

VIA EMAIL ONLY	
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