**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2020-3019369 (Water)

Office of Consumer Advocate : C-2020-3019751

Office of Small Business Advocate : C-2020-3019767

Jessica and Jeffrey LaBarge : C-2020-3019627

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

Victoria Lozinak : C-2020-3019778

Charles and Jennifer Spryn : C-2020-3019905

Cherise H. Sympson : C-2020-3020209

David Dollard : C-2020-3020219

Jan K. Vroman : C-2020-3020220

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

Anna-Maria Rucci : C-2020-3020245

West Norriton Township : C-2020-3020401

Andrew Wu : C-2020-3020497

Timothy Fuhrmann : C-2020-3020516

Terrence Reilley and Dorothy Reilley : C-2020-3020524

Ahmed Rashed : C-2020-3020546

Dennis Gore : C-2020-3020547

Bryan A. Stephen : C-2020-3020699

Sam Galdieri : C-2020-3020841

Robert D. and Maryann Reardon : C-2020-3020842

Maria Moceri : C-2020-3020843

Dennis Sweigart : C-2020-3020845

Anne Leithiser : C-2020-3020846

Sharon Higinbotham : C-2020-3020851

Diane Vottero : C-2020-3020852

Linda C. Denby : C-2020-3020887

Michael Palin : C-2020-3020888

Ron Bair, Jr. : C-2020-3020889

Michael Andrews : C-2020-3020892

Thomas Blakely : C-2020-3020893

Pamela Blakely : C-2020-3020894

Shannon Haig : C-2020-3020933

Randy and Sandra McKinley : C-2020-3020934

Timothy Peter Walsh : C-2020-3020935

Andrew D. Sproat : C-2020-3020936

John Norton : C-2020-3020937

Christopher Visco : C-2020-3020938

Tom E. Will : C-2020-3020939

East Norriton Township : C-2020-3021060

Robert Redinger, Jr. : C-2020-3021167

Leroy James Watters, III : C-2020-3021380

Gregory and Catherine Gannon : C-2020-3021381 :

v. :

:

Pennsylvania-American Water Company :

Pennsylvania Public Utility Commission : R-2020-3019371 (Wastewater)

Office of Consumer Advocate : C-2020-3019754

Office of Small Business Advocate : C-2020-3019772

Jessica and Jeffrey LaBarge : C-2020-3019627

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

William H. Rissmiller : C-2020-3020198

David Dollard : C-2020-3020219

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

Terrence Reilley and Dorothy Reilley : C-2020-3020524

Dennis Gore : C-2020-3020547

Hal H. Harris : C-2020-3020563

Svetlana Perminova and Viktor Ushenko : C-2020-3020829

Sam Galdieri : C-2020-3020841

Timothy Peter Walsh : C-2020-3020935

Christopher Visco : C-2020-3020938

Gregory and Catherine Gannon : C-2020-3021381 :

v. :

:

Pennsylvania-American Water Company :

**SECOND INTERIM ORDER**

**MODIFYING LITIGATION SCHEDULE**

**Background**

On April 29, 2020, the Company filed Supplement No. 19 to Original Tariff Water – Pa. P.U.C. No. 5 and Supplement No. 19 to Original Tariff Wastewater – Pa. P.U.C. No. 16, issued to be effective for service rendered on and after June 28, 2020. The filing proposed changes to PAWC’s base rates designed to produce an increase in annual water and wastewater revenues totaling $138.6 million over two years: $92.4 million, annualized over the entire year 2021, and $46.2 million in 2022.

Beginning on April 29, 2020, Complaints and Petitions to Intervene were filed by various Parties including the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA), and the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

By Orders entered May 21, 2020, the Commission instituted formal investigations at Docket Nos. R-2020-3019369 (Water) and R-2020-3019371 (Wastewater) to determine the lawfulness, justness and reasonableness of the Company’s existing and proposed rates, rules and regulations. Accordingly, the Water Tariff Supplement and Wastewater Tariff Supplement were suspended by operation of law until January 28, 2021, unless permitted by Commission order to become effective at an earlier date. The matter was assigned to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

On May 22, 2020, a Notice was issued to the Parties informing them the proceedings were assigned to the undersigned Administrative Law Judge (ALJ) and that a telephonic Prehearing Conference would be held on June 4, 2020, at 1:00 p.m.[[1]](#footnote-1)

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

PAWC filed Supplement No. 20 to Tariff Water – Pa. P.U.C. No. 5 with no effective date, to reflect the suspension of Tariff No. 5 until January 28, 2021, and Supplement No. 20 to Tariff Wastewater – Pa. P.U.C. No. 16 with no effective date, to reflect the suspension of Tariff No. 16 until January 28, 2021.

On May 28, 2020, OCA filed an Expedited Motion for an Extension of the Statutory Period of Pennsylvania-American Water Company’s Base Rate Proceeding (Motion for Extension). OCA asserted that a forty-five (45) day extension of the statutory suspension period “is necessary to meet the mounting challenges resulting from the COVID-19 pandemic.”

The ALJ advised the Parties that OCA’s Motion for Extension would be addressed at the Prehearing Conference by Chief Administrative Law Judge Charles E. Rainey, Jr. (Chief ALJ Rainey). PAWC filed an Answer in Opposition to OCA’s Motion and I&E and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed Answers supporting OCA’s Motion.

The ALJ convened the Prehearing Conference as scheduled on June 4, 2020.

Chief ALJ Rainey was present to consider OCA’s Motion. The following Parties participated in the conference:

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

Prior to discussion of the litigation schedule, Chief ALJ Rainey received the Parties’ oral arguments on OCA’s Motion for Extension. After argument and deliberation with the ALJ, Chief ALJ Rainey granted OCA’s Motion for Extension on the record, thereby extending the statutory suspension period by forty-five (45) days, i.e., until March 15, 2021. Chief ALJ Rainey’s ruling was reduced to writing in the Order Granting the Office of Consumer Advocate’s Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company’s Base Rate Proceeding (*Extension Order*), which was issued to the Parties on June 4, 2020.

On June 15, 2020, the ALJ issued a *Prehearing Order* establishing the litigation schedule as agreed to by the Parties at the Prehearing Conference and consistent with the Chief ALJ Rainey’s decision to grant additional procedural time in this proceeding.

On June 18, 2020, PAWC filed Supplement No. 21 to Tariff Water-PA P.U.C. No. 5 and Supplement No. 21 to Tariff Wastewater-PA P.U.C. No. 16 thereby further suspending

the proposed rates’ effective date until March 15, 2021.

On June 24, 2020, PAWC filed a Petition for Reconsideration (Petition) seeking reversal of CALJ Rainey’s June 4, 2020 Order.

On July 6, 2020, OCA and I&E filed Answers to the Petition. On July 8, 2020, CAUSE-PA filed an Answer to the Petition. On July 14, 2020, the OSBA filed an Answer to the Petition.

On August 20, 2020, the Commission issued an *Opinion and Order* (*August 2020* *Order*), granting, in part and denying, in part, PAWC’s Petition, affirming Chief ALJ Rainey’s *Extension Order*, and directing the OALJ to modify, if necessary, the litigation schedule appearing in the ALJ’s *Prehearing Order* issued on June 15, 2020, consistent with the *Opinion and Order*.

Under the August 2020 *Order*, in pertinent part, the Commission affirmed Chief ALJ Rainey’s *Extension Order*, granting OCA’s request for an additional forty-five days in the procedural schedule. However, the Commission effectively denied extending the effect date of the PAWC’s proposed rates from January 28, 2021 to March 15, 2021. The Commission explained as follows:

Because we are only authorizing the extension or suspension of deadlines and not of substantive rights, failure to meet the seven-month deadline would result in the proposed rates going into effect by operation of law.[[[2]](#footnote-2)] Therefore, we find that PAWC is entitled to the appropriate rate relief in accordance with Section 1308(d) of the Code immediately following the end of the original statutory rate suspension period, which, in this case, is January 28, 2021.

*August 2020 Order* at 21.

The Commission noted that sufficient time was needed to consider and rule upon the Recommended Decision to be issued in the proceeding before the last reasonable public meeting prior to the expiration of the suspension date. Accordingly, the deadline for the issuance and filing of the presiding ALJ’s Recommended decision was set at on or before Thursday, December 24, 2020. *Id.*

The Commission further directed the Parties and the OALJ as follows:

Additionally, we shall reserve the following issues to be addressed at the appropriate stages in this proceeding for final adjudication: (1) the appropriate rate recovery immediately following the end of the Section 1308(d) suspension period until the date the final rates are approved in a final Commission order and take effect in the utility’s compliance tariff filing; and (2) the appropriate mechanism for implementing such rate recovery. We shall direct the Parties to address the foregoing rate recovery issues at the appropriate stages in this proceeding and direct the OALJ to fully address the issues and provide a recommended disposition thereof in the Recommended Decision.

*Id.* at 22.

**E-service**

**The Parties are reminded that the Commission presently does not have access to regular mail because our offices are closed due to the COVID-19 pandemic, all Parties are encouraged to sign-up for e-filing and e-service. Please visit the Commission’s website at** [**www.puc.pa.gov**](http://www.puc.pa.gov) **for instructions.**

**Discussion**

The litigation schedule appearing in the *Prehearing Order* issued on June 15, 2020, was based upon a suspension date effective March 15, 2021. As noted above, in its *August 2020 Order*, the Commission found that PAWC was entitled to the appropriate rate relief in accordance with Section 1308(d) of the Code immediately following the end of the original statutory rate suspension period, that is, January 28, 2021. Accordingly, the litigation schedule set forth in the *Prehearing Order* must be modified for consistency with the Commission’s *August 2020 Order.*

**Order**

THEREFORE,

IT IS ORDERED THAT:

1. The litigation schedule appearing in the June 15, 2020 *Prehearing Order* is modified in accordance with the below schedule:

|  |  |
| --- | --- |
| **Date** | **Event** |
|  |  |
| June 4, 2020 | Prehearing Conference |
| August 18, 25, 26, 27, 2020 | Videoconference/Telephonic Public Input Hearings beginning at 1:00 p.m. and 6:00 p.m. each day over Webex facilitated by PAWC’s Co-Counsel Morgan Lewis & Bockius LLP and OCA |
| September 8, 2020 | Written Direct Testimony of All Non-Company Parties |
| September 29, 2020 | Written Rebuttal Testimony of All Parties |
| October 20, 2020 | Written Surrebuttal Testimony of All Parties |
| October 22, 2020 | Written Rejoinder or Rejoinder Outline |
| October 23, 26, 27, 28, 29, 2020 | Videoconference/Telephonic Evidentiary Hearings (Including Oral Rejoinder) beginning at 9:30 a.m. each day over Webex facilitated by PAWC’s Co-Counsel Morgan Lewis & Bockius LLP and OCA |
| November 10, 2020 | Main Briefs Due |
| November 19, 2020 | Reply Briefs Due or Submission of Joint Settlement Petition Executed by Representatives of All Parties, Together with All Parties’ Statements in Support of Settlement |
| December 24, 2020 | Recommended Decision Issuance Due |
| January 28, 2021 | End of Suspension Period |
| March 15, 2021 | End of Procedural Schedule |

2. That, the *Prehearing Order* issued in this proceeding on June 15, 2020, at Docket Nos. R-2020-3019369 and R-2020-3019371 shall remain in effect in all other respects.



Date: September 2, 2020

**R-2020-3019369, et al. - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA AMERICAN WATER COMPANY*ACTIVE SERVICE LIST Revised 7/29/20***

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**R-2020-3019369, et al. - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA AMERICAN WATER COMPANY*INACTIVE SERVICE LIST Revised 8/28/20***

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1. Due to the ongoing COVID-19 pandemic, the Commission’s offices were closed. Consequently, the prehearing conference was scheduled to convene telephonically. [↑](#footnote-ref-1)
2. *See* 66 Pa.C.S. § 1308(d), [↑](#footnote-ref-2)