**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 :

**THIRD INTERIM ORDER**

**ADDRESSING FILING OF COMMENTS**

**OR OBJECTIONS TO NON-UNANIMOUS SETTLEMENT**

BACKGROUND

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued the Proclamation of Disaster Emergency pursuant to Section 7301(c) of the Emergency Management Services Code, 35 Pa.C.S. §§ 7101, *et seq*. (*Executive Order*) to address the exigencies created by the COVID-19 global pandemic.

On March 15, 2020, the Commonwealth of Pennsylvania’s Deputy Secretary for Human Resources and Management issued an Executive Order implementing protocols for remote telework for state offices in Dauphin County and the Capital Complex, including the Commission’s offices, as amended, beginning March 16, 2020, and extending at least through a period effective as of the entry date of this Opinion and Order.

On March 19, 2020, the Governor’s Office issued an order closing all businesses that were not life sustaining.[[1]](#footnote-1)

On March 20, 2020, the Commission issued the *Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (*Emergency Order*), to furnish guidance on the conduct of Commission proceedings during the pendency of the COVID-19 disaster emergency. Specifically, the *Emergency Order* directs, in part, that:

Parties to proceedings before the Commission are encouraged to cooperate regarding the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines in connection with the performance of any obligation prescribed by the Public Utility Code or other applicable law.

*Emergency Order* at 4. The *Emergency Order* further provides that:

[I]n pending rate case litigation, the Chief ALJ 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 ALJ’s decision would then be subject to review by the Commission.

*Emergency Order* at 2. Additionally, in response to the *Executive Order*, the Commission adopted broader electronic filing practices, ceased paper service on and by the Commission for the duration of the emergency, and has encouraged other flexible procedures to allow the Commission to continue to operate through the emergency.

HISTORY OF THE PROCEEDING

On March 30, 2020, Pennsylvania American Water Company (PAWC) filed with the Commission its Notice of Intent to file data and testimony in support of its proposed general base rate increase on or before April 29, 2020.

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. Parties that filed Complaints in this case are set forth in the caption of this case. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), AK Steel Corporation (AK Steel) and the Commission on Economic Opportunity (CEO) each filed Petitions to Intervene.

By Order entered May 21, 2020 pursuant to 66 Pa.C.S. §1308(d), the Commission suspended PAWC’s general base rate increase filing by operation of law until January 28, 2021 (Suspension Order) and instituted an investigation to determine the lawfulness, justness and reasonableness of the Company’s existing and proposed rates, rules and regulations. 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 me, the undersigned Administrative Law Judge (ALJ), and that a telephonic Prehearing Conference would be held on June 4, 2020, at 1:00 p.m.[[2]](#footnote-2)

In compliance with the Commission’s Suspension Order, on May 27, 2020, PAWC filed Tariff Supplement No. 20 to Original Tariff Water – Pa. P.U.C. No. 5 and Supplement No. 20 to Original Tariff Wastewater – Pa. P.U.C. No. 16, reflecting the suspension until January 28, 2021.

On May 28, 2020, the OCA filed its Expedited Motion, requesting that the

Commission extend the statutory suspension period by forty-five-days. The OCA

invoked the *Executive Order* and the *Emergency Order* as the basis for seeking a forty-five-day extension of the suspension period. In support of its Expedited Motion, the OCA stated that additional time is needed to review the rate filing and present the OCA’s case given that the OCA’s staff members are currently working remotely due to the COVID-19 pandemic, and, thus, lack access to full office resources. Additionally, the OCA submitted that additional review time is needed because this rate case is particularly complex. Expedited Motion at 6-7.

I advised the Parties that the Expedited Motion would be addressed at the Prehearing Conference. PAWC filed an Answer in Opposition to the OCA’s Motion and I&E and CAUSE-PA filed Answers supporting OCA’s Motion.

On June 4, 2020, I convened the Prehearing Conference and Chief ALJ Charles E. Rainey was present to consider OCA’s Motion. The following Parties[[3]](#footnote-3) 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 them, 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, I issued a *Prehearing Order* establishing the litigation schedule as agreed to by the Parties at the Prehearing Conference and consistent with

Chief ALJ Rainey’s decision to grant additional procedural time in this proceeding. At the Prehearing Conference, Docket Nos. R-2020-3019369 and R-2020-3019371 and all Complaints were consolidated for further proceedings and resolution.

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 effective 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.[[[4]](#footnote-4)] 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. Additionally, the Commission directed me to modify, if necessary, the litigation schedule established in the Prehearing Order. *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.

By Notice date July 21, 2020, the Parties were informed that 8 virtual public input hearings would be scheduled and held at the dates and times as follows:

|  |  |
| --- | --- |
| **Date** | **Time(s)** |
| August 18, 2020 | 1:00 P.M.  6:00 P.M. |
| August 25, 2020 | 1:00 P.M.  6:00 P.M. |
| August 26, 2020 | 1:00 P.M.  6:00 P.M. |
| August 27, 2020 | 1:00 P.M.  6:00 P.M. |

The public input hearings convened as scheduled, and 35 individuals, including ratepayers, provided testimony addressing PAWC’s proposed rate increase.

On August 4, 2020, a Secretarial Letter was issued directing the parties to address questions raised by Commissioner Ralph V. Yanora concerning utility practices to prevent cross-connections and back-flow. On September 4, 2020, the Company submitted a written statement of supplemental direct testimony to address the questions presented by the Secretarial Letter.

On September 2, 2020, I issued a Second Interim Order Modifying Litigation Schedule (Second Interim Order), which revised the schedule for the submission of written testimony and evidentiary hearings in accordance with the *August 2020 Order*. The Second Interim Order rescheduled the evidentiary hearings for October 23, 26-29, 2020, starting at 9:30 a.m. each day.

By Notice dated September 8, 2020, the Parties were informed that evidentiary hearings would convene in this matter on October 23, 26-29, 2020, starting at 9:30 a.m. each day. The September 8, 2020 Notice further informed the Parties that you may lose your case, if you did not participate in this hearing and present facts on the issues raised. Heretofore Complainants Charles and Jennifer Spryn, Docket No. C-2020-3019905, Complainant Jan K. Vroman, Docket No. C-2020-3020220, and Complainants Jessica and Jeffrey LaBarge, Docket No. C-3030-3019627 were on the Active Service List; however, they did not participate in the evidentiary hearings. Therefore, they will be moved from the Active Service list to the Inactive Service list.[[5]](#footnote-5)

In accordance with the modified schedule established in the Second Interim Order, on September 8, 2020, AK Steel, CAUSE-PA, CEO, I&E, OCA, OSBA, and PAWLUG submitted a total of 18 written statements of direct testimony and accompanying exhibits. On September 29, 2020, PAWC, I&E, OSBA, and PAWLUG submitted a total of 19 written statements of rebuttal testimony with accompanying exhibits. On October 20, 2020, AK Steel, CAUSE-PA, I&E, OCA, OSBA, and PAWLUG submitted a total of 17 written statements of surrebuttal testimony with accompanying exhibits. On October 22, 2020, PAWC submitted an Oral Rejoinder Outline for seven witnesses.

The Parties engaged in discussions to try to achieve a settlement of some or all the issues in this case. As a result of those negotiations, the PAWC and I&E were able to agree to a settlement, which resolves all issues between I&E and the Company in the proceeding.

By email dated October 20, 2020, the Parties jointly requested cancellation of the first day of the evidentiary hearings to facilitate settlement discussions. On the same date, I informed the Parties that the first day of evidentiary hearings would convene as a Second Prehearing Conference, and the Parties should be prepared to discuss procedural matters, outstanding issues, and settlement status.

During the Second Prehearing Conference held on October 23, 2020, PAWC informed me that a settlement had between achieved between I&E and the Company. PAWC explained that the Company was continuing negotiations with the remaining Parties that did not join the settlement to narrow the outstanding issues for litigation in this case. Also, all Parties had waived cross-examination, subject to the right to cross-examine Company witnesses on their rejoinder testimony. I directed the Company to file the proposed settlement between PAWC and I&E by October 30, 2020 and established a deadline for the submission of responses in opposition to the proposed settlement by November 20, 2020. The deadline for PAWC to reply to any opposition to the settlement was set at November 30, 2020. Additionally, at the joint request of the Parties participating in the conference, I cancelled the second day of the evidentiary hearings, which was scheduled to convene on October 26, 2020.

On October 26, 2020, the Company supplemented its Oral Rejoinder Outline by serving two written statements of rejoinder testimony in advance of the evidentiary hearing scheduled the next day.

Virtual evidentiary hearings were held on October 27-28, 2020. At the hearings, PAWC witnesses Bruce W. Aiton, Ashley E. Everette, John R. Wilde, Tawana Dean and Preston Pallas presented oral rejoinder testimony and were cross-examined by counsel for other parties. Company witness James H. Cawley, whose written rejoinder testimony had been served on October 26, 2020, was made available for cross-examination, and was questioned by me. The written testimony and exhibits of all Parties were admitted into evidence. I also granted the Company’s request for leave to file the following appendices to the proposed settlement on November 6, 2020:

* Proposed Water Tariff (Appendix A)
* Proposed Wastewater Tariff (Appendix B)
* Proof of Revenues (Appendix C)
* Distribution System Improvement Charge (“DSIC”) – Total Aggregate Plant Costs (Appendix F)
* Bill Comparisons (Water) (Appendix G)
* Bill Comparisons (Wastewater) (Appendix H)

By email dated October 29, 2020, counsel for PAWLUG, informed me that PAWLUG was in discussions with PAWC to determine whether PAWLUG would join the proposed settlement reached between I&E and PAWC. Accordingly, if PAWLUG decided to join in the settlement, PAWLUG requested leave to file a statement in support of the proposed settlement by November 3, 2020. By email on the same day, PAWLUG’s request was granted.

On October 30, 2020, PAWC and CAUSE-PA filed a Joint Stipulation addressing issued raised by CAUSE-PA in this proceeding.

On October 30, 2020, PAWC, I&E and PAWLUG filed a Joint Petition for Non-Unanimous Settlement of Rate Investigation.

THEREFORE,

IT IS ORDERED:

1. That any comments or objections to the Joint Petition for Non-Unanimous Settlement of Rate Investigation filed by Pennsylvania-American Water Company, the Commission’s Bureau of Investigation and Enforcement and Pennsylvania-American Water Large User Group on October 30, 2020, shall be filed by **November 20, 2020**.

2. That any reply to the comments or objections to the Joint Petition for Non-Unanimous Settlement of Rate Investigation filed by Pennsylvania-American Water Company, the Commission’s Bureau of Investigation and Enforcement and Pennsylvania-American Water Large User Group on October 30, 2020, shall be filed by **November 30, 2020**.



Date: November 5, 2020

**R-2020-3019369, et al. - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA AMERICAN WATER COMPANY*ACTIVE SERVICE LIST Revised 11/5/20***

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1. *See Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining*, as amended; *see also Order of the Secretary of the Pennsylvania Department of Health Regarding the Closure of All Businesses That Are Not Life Sustaining*, as amended. [↑](#footnote-ref-1)
2. Due to the ongoing COVID-19 pandemic, the Commission’s offices were closed. Consequently, the prehearing conference was scheduled to convene telephonically. [↑](#footnote-ref-2)
3. Intervenor CEO and Complainants Charles and Jennifer Spryn were excused from participating in the Prehearing Conference. [↑](#footnote-ref-3)
4. *See* 66 Pa.C.S. § 1308(d), [↑](#footnote-ref-4)
5. After being notified, a party who fails to be represented at a hearing may be deemed to have waived the opportunity to participate in the hearing and thereafter will not be permitted to reopen the disposition of a matter accomplished at the hearing . *See* 52 Pa.Code § 5.245. [↑](#footnote-ref-5)