

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oa

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

November 19, 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 Reply Brief in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: The Honorable Conrad A. Johnson (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*299536

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 documents, the Office of Consumer Advocate's Reply Brief, 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 19th day of November 2020.

SERVICE BY E-MAIL ONLY

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Anthony C. DeCusatis, Esquire
Kenneth M. Kulak, Esquire
Brooke. E. McGlinn, Esquire
Mark A. Lazaroff, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Susan Simms Marsh, Esquire
Elizabeth Rose Triscari, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Michael L. Kurtz, Esquire
Kurt J. Boehm, Esquire
Jody Kyler Cohn, Esquire
Boehm, Kurtz, & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Joseph L. Vullo, Esquire
Commission on Economic Opportunity
1460 Wyoming Avenue
Forty Fort, PA 18704

Erin K. Fure, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

Adeolu A. Bakare, Esquire
Jo-Anne S. Thompson, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

David P. Zambito, Esquire
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Elizabeth R. Marx, Esquire
Ria M. Pereira, Esquire
John W. Sweet, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Jan K. Vroman
623 Eastman Street
West Mifflin, PA 15122
jan.vroman@yahoo.com

Jessica and Jeffrey LaBarge
123 Fairmount Avenue
Reading, PA 19606
jessi@russolawllc.com

Charles and Jennifer Spryn
899 Bullcreek Road
Butler, PA 16002
sprynhouse@live.com

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue
Suite 720 T
St. Louis, MO 63105

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

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

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAappleby@paoca.org

Lauren E. Guerra
Assistant Consumer Advocate
PA Attorney I.D. # 323192
E-Mail: LGuerra@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 19, 2020
*299535

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

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: November 19, 2020

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAappleby@paoca.org

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

Lauren E. Guerra
Assistant Consumer Advocate
PA Attorney I.D. # 323192
E-Mail: LGuerra@paoca.org

Counsel for
Tanya J. McCloskey
Acting Consumer Advocate

TABLE OF CONTENTS

I.	INTRODUCTION AND OVERVIEW	1
	D. Overview of the Non-Unanimous Settlement.....	1
	E. Burden of Proof.....	1
III.	OVERALL POSITION ON RATE INCREASE	2
IV.	PAWC’S PROPOSED MULTI-YEAR RATE PLAN.....	8
V.	RATE BASE	9
	B. Average Versus Year-End Rate Base	9
	C. Rate Base Adjustment Relating to Amortization of EADIT	11
VI.	REVENUES	11
VII.	OPERATING AND MAINTENANCE EXPENSES.....	12
	A. Payroll Costs – Prorating Wage Increases	12
	B. Performance Based Compensation (PAWC and Service Co.).....	12
	C. Capitalization Rate.....	14
VIII.	TAXES	14
	A. Taxes Other Than Income Taxes	14
	B. Income Taxes – Excess ADIT	14
IX.	RATE OF RETURN	17
X.	REGIONALIZATION AND CONSOLIDATION SURCHARGE.....	20
XI.	PENSION/OPEB TRACKER	20
XII.	RATE STRUCTURE AND RATE DESIGN	21
	A. Introduction.....	21
	B. Cost of Service Study.....	21
	C. Rate Design Proposals	21
	D. Allocation of Wastewater Revenue Requirement to Water Operations	21
	E. Allocation of Steelton Revenue Requirement to Other Water Operations	23
	F. Separate Stormwater Rate.....	24
XIV.	LOW-INCOME CUSTOMER ASSISTANCE.....	24
	A. Bill Discount Program	24
	C. Low-Income Customer Outreach, Data Collection and Reporting.....	25

XV. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES	25
A. Customer Performance Service Standards.....	25
B. Call Centers.....	27
C. Customer Complaints.....	30
1. Reporting on PAWC’s Analysis of Root Causes of Disputes and Complaints and Response to Identified Trends	30
2. Complaint Logs	31
D. Customer Satisfaction Surveys	31
E. Training on Termination of Service.....	32
F. Pressure Surveys and Pressures	33
G. Main Extensions.....	33
H. Sewage Backups	36
XVI. TARIFF CHANGES	36
A. Limitation of Liability.....	36
B. Chapter 56 Customer Protections to Be Included in Tariff	38
XVII. CONCLUSION	39

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>Behrend v. Bell,</u> 242 Pa. Super. Ct. 47, 363 A.2d 1752 (1976).....	37
<u>Berner v. Pa. P.U.C.,</u> 382 Pa. 622, 116 A.2d 738 (1955).....	1
<u>Bluefield Water Works & Improvement Co. v. Public Serv. Comm’n,</u> 262 U.S. 679 (1923)	4, 5
<u>Brockway Glass v. Pa. P.U.C.,</u> 63 Pa. Commw. 238, 437 A.2d 1067 (1981)	1
<u>DeFrancesco v. West Penn Water Co,</u> 329 Pa. Super. Ct. 508, 478 A.2d 1295 (1984).....	37
<u>Donham v. Public Serv. Comm’n,</u> 232 Mass. 309 (1919)	6, 7
<u>Duquesne Light Co. v. Barasch,</u> 488 U.S. 299 (1989)	3
<u>Duquesne Light Co. v. Pa. P.U.C.,</u> 176 Pa. Super. 568 (1954)	3
<u>Federal Power Comm’n v. Hope Natural Gas Co.,</u> 320 U.S. 591 (1944)	3, 4
<u>Federal Power Comm’n v. Texaco, Inc.,</u> 417 U.S. 380 (1974)	3
<u>Lower Frederick Twp. v. Pa. P.U.C.,</u> 48 Pa. Commw. 222, 409 A.2d 505 (1980).....	1
<u>Market St. R. Co. v. Railroad Comm’n of Ca.,</u> 324 U.S. 548 (1945)	3
<u>Pennsylvania Elec. Co. v. Pa. P.U.C.,</u> 509 Pa. 324 (1985)	3, 4
<u>Public Serv. Comm’n v. Great Northern Util. Co.,</u> 289 U.S. 130 (1933)	3
<u>University of Pennsylvania v. Pa. P.U.C.,</u> 86 Pa. Commw. 410, 485 A.2d 1217 (1984).....	1

Administrative Decisions

<u>Application of California-American Water Co.,</u> 2018 Cal. PUC LEXIS 628 (Dec. 20, 2018)	16
<u>Blue Bird Coach Lines, Inc.,</u> 72 Pa. PUC 262 (1990).....	35
<u>In Re: Tennessee American Water Co.’s Response to the Commission’s Investigation on</u> <u>the Impact of Federal Tax Reform on the Public Utility Revenue Requirements,</u> 2020 Tenn. PUC LEXIS 101 (Aug. 3, 2020)	16
<u>In the Matter of the Petition of New Jersey-American Water Co., Inc., with Calculation of</u> <u>Rates Under the Tax Cuts and Jobs Act of 2017,</u> AX18010001, WR18030233, Order (N.J. Bd. of Pub. Util., Oct. 28, 2020)	16
<u>Missouri, Kansas & Topeka Railway Co. v. Interstate Commerce Comm’n,</u> 164 Fed. 645 (1908)	7
<u>Pa. P.U.C. v City of Bethlehem,</u> 2011 Pa. PUC LEXIS 190 (2011)	2
<u>Pa. P.U.C. v. Equitable Gas Co.,</u> 57 Pa. PUC 423 (1983).....	1
<u>Pa. P.U.C. v. Pennsylvania-American Water Co.,</u> R-2013-2355276, Order (Dec. 19, 2013)	34
<u>Pa. P.U.C. v. Pennsylvania-American Water Co.,</u> R-2017-2595853, Order (Dec. 7, 2017)	34
<u>Pa. P.U.C. v. Philadelphia Gas Works,</u> Docket No. R-00005654, Order (Nov. 22, 2000).....	27
<u>Pa. P.U.C. v. Philadelphia Suburban Water Co.,</u> 1991 Pa. PUC LEXIS 206 (1991)	18
<u>Pa. P.U.C. v. PPL Elec. Util. Corp.,</u> 237 PUR4th 419 (PaPUC 2004).....	1
<u>Pa. PUC v. UGI Utilities, Inc.- Elec. Div.,</u> R-2017-2640058, Order (Oct. 18, 2018)	1, 37
<u>Proceeding on Motion of the Commission on Changes in Law that May Affect Rates,</u> 2018 N.Y. PUC LEXIS 393 (Aug. 9, 2018).....	16
<u>Re V.I.P. Travel Servs., Inc.,</u> 56 Pa. PUC 625 (1982).....	35

<u>Tariff Provisions that Limit the Liability of Utilities for Injury or Damage as a Result of Negligence or Intentional Torts, Policy Statement,</u>	
29 Pa.B. 2147 (Nov. 19, 1998).....	37

Statutes

66 Pa. C.S. § 315(a)	1, 2, 22
66 Pa. C.S. § 523(a)	26, 27
66 Pa. C.S. § 523(a)	27
66 Pa. C.S. § 526(a)	27
66 Pa. C.S. § 1102(a)	35
66 Pa. C.S. § 1103(a)	35
66 Pa. C.S. § 1310(d)	3
66 Pa. C.S. § 1311(c)	22, 23, 24, 25
66 Pa. C.S. § 1330.....	9, 11
66 Pa. C.S. § 1504.....	27

Regulations

52 Pa. Code § 65.3	31
52 Pa. Code § 69.87	37

I. INTRODUCTION AND OVERVIEW

The OCA submits this Reply Brief in response to the Main Brief filed by Pennsylvania-American Water Company (PAWC). The OCA will respond only to those matters raised by PAWC that were not previously addressed or that require clarification. The OCA does not waive its opposition on contested issues because it does not repeat arguments here and incorporates by reference the arguments and analysis in its Main Brief.¹

D. Overview of the Non-Unanimous Settlement

The OCA will respond to the petition for non-unanimous settlement by November 20, 2020, as directed by Administrative Law Judge Conrad A. Johnson. Tr. 533-34.

E. Burden of Proof

In its Main Brief, PAWC does not present a complete description of its burden in this proceeding.² PAWC M.B. at 17. Section 315(a) requires PAWC to prove that the proposed rates are just and reasonable, and for PAWC to bear the burden of proof to establish the justness and reasonableness of every element of its requested rate increase.³ PAWC's recitation of the standard set forth in the UGI Electric⁴ order that it relies on is incomplete. The Commission also stated:

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company's filing.⁵

¹ The OCA submitted an Abridged Main Brief, as directed by ALJ Johnson, on November 18, 2020. Page references herein to "OCA M.B." are to the Abridged Main Brief, rather than the Main Brief served on November 10, 2020.

² PAWC states "while Section 315(a) provides that a utility has the burden to prove that proposed rates are just and reasonable, it "cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing." PAWC M.B. at 17.

³ 66 Pa. C.S. § 315(a); see also Lower Frederick Twp. v. Pa. P.U.C., 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980); Brockway Glass v. Pa. P.U.C., 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

⁴ Pa. PUC v. UGI Utilities, Inc.- Elec. Div., Docket No. R-2017-2640058, Order at 7 (Oct. 18, 2018) (UGI Electric).

⁵ UGI Electric at 7; see, Berner v. Pa. P.U.C., 382 Pa. 622, 116 A.2d 738 (1955); see also Pa. P.U.C. v. Equitable Gas Co., 57 Pa. PUC 423, 471 (1983). See also University of Pennsylvania v. Pa. P.U.C., 86 Pa. Commw. 410, 485 A.2d 1217 (1984); Pa. P.U.C. v. PPL Elec. Util. Corp., 237 PUR4th 419 (PaPUC 2004).

Thus, the burden is not on the OCA to prove that PAWC's proposed rates are unjust, unreasonable, or not in the public interest. Instead, Pennsylvania law requires only that the OCA show how PAWC failed to meet its burden of proof. While subtle, this critical distinction shows that parties opposing a utility in a rate proceeding need only to shift the burden of going forward to prevail. The burden of proof will not shift to an intervener that is challenging the requested rate increase.⁶ The OCA submits that PAWC has failed to satisfy its statutory burden.

In its Main Brief, PAWC proposes a number of findings of fact related to the issues raised by the OCA. PAWC M.B., App. C. To the extent they are inconsistent with the OCA's recommendations as presented in the OCA's Main Brief and herein, the OCA respectfully requests that the findings be modified or denied by the Commission.

III. OVERALL POSITION ON RATE INCREASE

The OCA's position is that PAWC should not receive an increase at this time due to the economic impact that the pandemic has had and continues to have on its customers. OCA St. 1 at 6-30, OCA St. 1SR at 2-3, 20-23. Mr. Rubin's recommendation is supported by his analysis of the requirements of setting just and reasonable rates under Section 1301 of the Public Utility Code during a situation like a pandemic. In addition to the legal and policy bases, the projections that PAWC made for its future test year, fully projected future test year (Year 1) and for its second fully projected future test year (Year 2) cannot be relied on to set rates for the next two years due to the pandemic that impacted, and continues to impact, its service territory and customers.

⁶ Pa. P.U.C. v City of Bethlehem, 2011 Pa. PUC LEXIS 190, *11 (2011).

PAWC's claim that the OCA's recommendation is confiscatory should be denied. See PAWC M.B. at 8. The Constitution requires that rates must be higher than a confiscatory level⁷ and the utility should have the opportunity to earn a fair rate of return given the risks under the particular ratesetting system.⁸ The Supreme Court held that, while the due process clause of the Fourteenth Amendment safeguards against confiscation, or the compelling use of property for service without just compensation, "it does not ensure to public utilities the right under all circumstances to have a return upon the value of the property so used."⁹ It should further be mentioned that regulation does not ensure a profit.¹⁰ To invoke constitutional protection from confiscatory rates, it is not sufficient for a utility to merely assert in general language that rates are confiscatory.¹¹ The utility must specifically set forth facts that make clear that the rates would necessarily deny it just compensation and deprive it of its property without due process of law.¹² PAWC has not set forth facts that would establish that OCA's no-increase recommendation or OCA's revenue requirement recommendations are confiscatory.¹³

In 1985, the Pennsylvania Supreme Court affirmed an order under 66 Pa. C.S. § 1310(d) that reduced the rates that the appellant electric companies could charge because two nuclear power plants at Three Mile Island were shut down and no longer "used and useful".¹⁴ In its decision, the court addressed Federal Power Comm'n v. Hope Natural Gas Co. and the balancing of consumers and investors interest in determining just and reasonable rates:

In cases where the balancing of consumer interests against the interests of investors causes rates to be set at a "just and reasonable" level which is insufficient to ensure

⁷ Federal Power Comm'n v. Texaco, Inc., 417 U.S. 380, 392-92 (1974) (citing Federal Power Comm'n v. Natural Gas Pipeline Co., 315 U.S. 575, 585 (1942)).

⁸ Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

⁹ Public Serv. Comm'n v. Great Northern Util. Co., 289 U.S. 130, 135 (1933).

¹⁰ Market St. R. Co. v. Railroad Comm'n of Ca., 324 U.S. 548, 566 (1945) (citing Hope at 590).

¹¹ Public Serv. Comm'n v. Great Northern Util. Co., 289 U.S. at 136-37.

¹² Id. (citing Aetna Ins. Co. v. Hyde, 275 U.S. 440, 447. P. 136).

¹³ Duquesne Light Co. v. Pa. P.U.C., 176 Pa. Super. 568, 604 (1954).

¹⁴ Pennsylvania Elec. Co. v. Pa. P.U.C., 509 Pa. 324, 326 (1985).

the continued financial integrity of the utility, it may simply be said that the utility has encountered one of the risks that imperil any business enterprise, namely the risk of financial failure. The express language of the Hope decision weighs against regarding utilities as a protected class of business enterprises which are to be relieved of such normal business risks. Specifically, it was stated in Hope, 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345, that investment returns to utility owners ‘should be commensurate with returns on investments in other enterprises having corresponding risks.’¹⁵

...

In short, Hope sets forth a balancing test, like that which we described in Pennsylvania Gas, supra, for the determination of “just and reasonable” rates, to be applied with the aim of protecting consumers against exploitation at the hands of utility companies while seeking to preserve the financial integrity of utility companies. (citing Federal Power Commission v. Memphis Light, Gas & Water Division, 411 U.S. 458, 465-466, 93 S.Ct. 1723, 1728, 36 L.Ed.2d 426, 433 (1973)).¹⁶

On the topic of investor interests, the court stated:

The decision in Hope enumerated certain legitimate areas of concern for investors, these being that a company have sufficient revenue to cover operating and capital costs, that the return on equity be commensurate with returns on enterprises having similar risks, and that the company be able to maintain credit and attract capital. These investor interests are appropriate factors to be weighed in the balancing analysis under Hope, but they are not, in themselves, controlling, for other factors must be taken into account.¹⁷

The court also held that the legitimate investor interests listed in Hope are not of constitutional dimension, but are among the factors to be taken into account in the process of balancing interests to arrive at just and reasonable rates.¹⁸ In Bluefield, the Supreme Court discussed the boundaries within which rates would not be deemed too low as to be confiscatory, but also not too high as to be rates a utilities cannot reasonably be entitled to.¹⁹ This determination “depends upon many circumstances” and must have “regard to all relevant facts.”²⁰ The Court found that the return

¹⁵ Id. at 331-32 (citing Federal Power Comm’n v. Hope Natural Gas Co., 320 U.S. 591 (1944) (Hope)).

¹⁶ Id. at 330.

¹⁷ Id. at 331 (emphasis added).

¹⁸ Id. at 334.

¹⁹ Bluefield Water Works & Improvement Co. v. Public Serv. Comm’n, 262 U.S. 679, 692-93 (1923).

²⁰ Id.

“should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.”²¹

The Court further stated:

[a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.²²

Accordingly, the relevant facts for determining if a rate is just and reasonable include not only the ratesetting environment, but also the performance and decisions of the utility. For example, the Company could preserve cash by deferring construction projects, such as growth-related projects or longer-term system rehabilitation activities that are longer term in nature, that are not needed to ensure the provision of safe and reliable service to existing customers. OCA St. 1 at 30. The Company could take advantage of the very low cost of debt available now. Id. In summation, the determination of just and reasonable rates in part rests on the efficient and economic management of the utility. Now, more than ever given the pandemic, PAWC’s ability to be more efficient during these tough times for customers should be a factor in the determination of just and reasonable rates.

PAWC states that OCA’s zero increase position is denying a rate increase that “objective financial data support”. PAWC M.B. at 8. As explained *infra*, the OCA’s traditional “business as usual” ratemaking analysis shows that PAWC has not justified an increase whether considering its MYRP or an end of year 2021 approach.²³ Mr. Smith’s recommendations, including Mr. Rothschild’s calculation of the cost of capital, show that PAWC’s projections for Rate Year 1 and

²¹ Id. (emphasis added).

²² Id.

²³ See OCA M.B., Appendices A.2 (end of year 2021) and A.3 (MYRP).

Rate Year 2 are wholly without foundation, are not based on the current costs or reasonably projected costs and are not supportable based on accepted ratemaking principles.

PAWC's primary argument is that Mr. Rubin's approach is "one-sided, customer-centric approach". PAWC M.B. at 8. The same one-sided argument could be said of PAWC's approach but it is a "shareholder-centric approach." What is critical though, as shown on Appendix A.1 to the OCA's Main Brief, a zero-increase scenario would provide a 7.7% overall rate of return for water and 2.84% for wastewater.²⁴ Although lower than the cost of capital the Company may desire, the returns would represent a "fair rate of return" because it represents a balancing of the consumers' interest with the investors' interests. Mr. Rubin explained that the Company would still be able to provide service, meet all of its operating expenses, cover its debt service and still earn a profit. OCA St. 1 at 28; PAWC Exh. 3-A pp. 1, 70. This is far more than what many businesses in its service territory are able to achieve during the pandemic. OCA St. 1 at 28-29. The Company could file again when the economic situation is more stable. Mr. Rubin's proposal is to keep the rates PAWC charges for water and wastewater service—that are currently just and reasonable—in place until the pandemic situation and the economy improve.

Mr. Rubin provided cases²⁵ from other periods of pandemic and economic hardship as precedents in his testimony to address constitutional concerns with his recommendation. OCA St. 1 at 22-24. During the Great Depression, this Commission took steps to protect customers by calling on utilities to reduce their rates so they would earn a return of no more than 6% on their rate base.²⁶ In Massachusetts during the 1918 flu pandemic the Supreme Judicial Court of

²⁴ OCA M.B. App A.1, Table I (Total Water) and Table I (Total Wastewater).

²⁵ Re Utility Rates During Economic Emergency, 3 P.U.R. NS 123 (Pa. P.S.C. 1934) (PSC 1934); Donham v. Public Serv. Comm'n, 232 Mass. 309, 317 (1919) (Donham).

²⁶ PSC 1934.

Massachusetts upheld a public service commission ratemaking order that was not expected to permit the utility to earn a profit due to the abnormal times.²⁷ The court stated:

To be just and reasonable, within the meaning of the constitutional guaranty, the rates must be prescribed with reasonable regard for the cost to the carrier of the service rendered and for the value of the property employed therein; but this does not mean that regard is to be had only for the interests of the carrier, or that the rates must necessarily be such as to render its business profitable, for reasonable regard must also be had for the value of the service to the public. And where the cost to the carrier is not kept within reasonable limits, or where for any reasons its business cannot reasonably be so conducted as to render it profitable the misfortune must fall upon the carrier, as would be the case if it were engaged in any other line of business.²⁸

Although the utility was facing hardships of its own, the court noted that it did not deprive the commission of its regulatory responsibility to “exercise its judgment for the protection of the public interests when it does not reduce substantially the revenue proposed to be exacted from the public by the owners of the public utility.”²⁹ The court emphasized that the rates were “likely to be impermanent and experimental.” *Id.* Mr. Rubin testified that:

[t]he idea that ratemaking must adapt to extraordinary conditions is neither new nor novel. A century ago during another serious pandemic, regulators adapted, took actions that provided relief to the public, and did not inflict long-term harm on the utility.

OCA St. 1 at 24.

PAWC argues that the OCA’s position is based on an “apparent recognition” of the flaws in Mr. Smith’s recommended revenue sufficiency for water and limited revenue deficiencies for wastewater. PAWC M.B. at 7, n. 31. Contrary to PAWC’s argument, the OCA’s primary position would mean no rate decrease as recommended by OCA witness Smith. If the Commission proceeds in a “business as usual” manner, Mr. Smith’s recommendations should be adopted,

²⁷ *Donham*, 232 Mass. at 317, 122 N.E. at 401.

²⁸ *Id.* (emphases added; quoting from *Missouri, Kansas & Topeka Railway Co. v. Interstate Commerce Comm’n*, 164 Fed. 645 (1908)).

²⁹ *Donham*, 232 Mass. at 326, 122 N.E. at 405.

PAWC also argues that its construction programs can provide economic activity (PAWC M.B. at 9) but it assumes, without support, that its construction budget will continue as it projected in early 2020. Ratepayers, however, cannot simply be viewed as a source of funding for economic development. Indeed, increasing rates at this time can only serve to harm the economic circumstances of customers. There is no evidence to support the position that construction will continue unimpeded because it is based on far reaching projections in the time of a pandemic.

PAWC argues that traditional ratemaking must be applied and that PAWC's low-income assistance programs will address the impact of increased rates. PAWC M.B. at 9. As discussed *infra*, the company's bill discount program provides assistance to an extremely small portion of its eligible customers and is limited to residential customers with incomes at or below 150% of the federal poverty level. That "solution" completely ignores the evidence in this proceeding of the wide spread and far reaching economic burdens of this pandemic. PAWC argues that its Non-Uniform Settlement reflects a "substantial reduction" in its request. PAWC M.B. at 9. The OCA will address this in its Comments in Opposition to the Non-Uniform Settlement.

IV. PAWC'S PROPOSED MULTI-YEAR RATE PLAN

PAWC's proposed multi-year rate plan (MYRP) is not supported by substantial evidence and should be denied. OCA St. 1 at 32-35. In its Main Brief, PAWC summarizes the reasons it wants the Commission to approve its proposed MYRP. PAWC M.B. at 10-11. It does not address the evidence that shows that its MYRP is not supported, especially during the pandemic, is not consistent with the Commission's Policy Statement, and is not consistent with sound ratemaking principles, especially during the pandemic. See OCA St. 1 at 32-35, OCA St. 1SR at 6; OCA St. 2 at 17-21; OCA St. 3 at 76-77. PAWC's claim that extended rate stability results from its MYRP is without merit. The MYRP is anything but stable rates for ratepayers as the rates increase each

year of the MYRP. Further, if the basis of the rates is not reasonable (and does not consider the impact of the pandemic on the projections made through December 2022) those rates cannot be found to be reasonable.³⁰ Finally, PAWC claims that its MYRP is consistent with Section 1330 of the Public Utility Code. OCA witness Rubin explained that PAWC's plan does not comport with the requirements set forth in the Commission's Policy Statement. OCA St. 1 at 33-34. PAWC's MYRP should be denied. If it is adopted, then the OCA has provided recommendations to the claimed revenue requirement for Rate Year 2, *infra* and the OCA has provided additional safeguards that should be adopted to ensure that ratepayers' interests are addressed, *infra*.

V. RATE BASE

B. Average Versus Year-End Rate Base

PAWC utilized two projected rate years to establish the Company's cost of service for the period ending December 31, 2021 (Rate Year 1) and December 31, 2022 (Rate Year 2) for determining its revenue requirement in this proceeding under its proposed MYRP. OCA St. 2 at 17. PAWC argues that an end of year rate base should be used for the second year of the MYRP (Rate Year 2). PAWC M.B. at 12-16. As support, the Company claims that if an MYRP is adopted, the 2022 Rate Year is comparable to the FPFTY in cases that employ only a FPFTY. Id. at 13. PAWC notes that if its proposed MYRP is denied, the first year (Rate Year 1) becomes a

³⁰ PAWC's further claim that better operation and business planning is dependent on an approved MYRP should be rejected. PAWC has planned for many years for capital expenditures over a period of time exceeding one year. To the extent those plans may change based on a variety of circumstances, PAWC adjusts its plans, just as any other business. Under its MYRP, customers would be paying rates that assume that nothing changes in PAWC's capital expenditure plans over the two years (minimum) that the rates are in place. There is no support that it is reasonable for customers to pay rates for at least two years based on PAWC's projections made in early 2020. PAWC also claims increased efficiency and economies of scale and scope but does not address how these efficiencies will result, or be captured for ratepayers if they do. For example, PAWC does not propose any review of its progress with its capital expenditures before Year 2 rates go into effect, or any review of its return before Year 2 rates go into effect.

FPFTY.³¹ Id. at 14. PAWC further argues that there is no opportunity for a “catch-up” increase to reflect the difference between average rate base and the end-of-year rate base. Id.

The OCA submits that the proposed MYRP differs significantly from tariff proposals involving one FPFTY. PAWC has overstated its cost of service for Rate Year 2 in its MYRP by reflecting costs at end of year levels rather than at the levels of costs that will be experienced during Rate Year 2. OCA St. 2 at 17-18. In other words, rather than reflecting costs that will be incurred *during* the 2022 Rate Year in its MYRP, PAWC has reflected costs that will be incurred as of January 1, 2023. Id. at 18. Using an average rate base for Rate Year 2 properly matches the collection of the revenue requirement during each year of an MYRP with the incurrence of the projected cost of providing utility service in that year. OCA St. 2 at 21.

The OCA submits that use of an average rate base becomes even more important as rates are projected even further out into the future under MYRPs. The 2022 Rate Year goes a full year beyond a FPFTY and is even more speculative than the FPFTY. The Company acknowledges that the MYRP already reduces uncertainty to the Company regarding its future operations and financial results. PAWC M.B. at 11. PAWC’s customers, however, are subject to the “risk of forecasting errors in PAWC’s favor that could lead to excessive rates.” OCA St. 3 at 77. This risk is exacerbated in the current case, where PAWC’s filing was prepared based on projections made before a global pandemic. OCA St. 3 at 76-77.

PAWC also mischaracterizes the OCA’s testimony by claiming that OCA witness Smith contended that it is never appropriate to use year-end rate base with any form of FPFTY. PAWC M.B. at 14. To the contrary, OCA witness Smith testified as follows:

³¹ The OCA agrees that if the Commission denies PAWC’s proposed MYRP, the 2021 Rate Year becomes the equivalent of an FPFTY, as it would become the only projected future test year. The OCA has provided calculations of its adjustments on a year-end basis, in this event. See OCA App. A.2.

To be clear, although the Commission has allowed the use of a year-end rate base for a FPFTY, the Commission has not allowed year-end rate base in the context of multi-year rate plans that project even further into the future. In my professional opinion, utilizing the end of year rate base for MYRPs would be a radical and extreme departure from traditional ratemaking.

OCA St. 2SR at 42. OCA witness Smith further testified that based on his experience in other states where MYRPs are used, an average rate year concept is always applied to each rate year in the MYRP.³² Id. at 42.

PAWC has provided no reasonable argument for the use of a year-end rate base within the context of an MYRP, which would impose substantial extra costs on Pennsylvania ratepayers. It is wholly unreasonable to impose extra costs on Pennsylvania ratepayers in the context of a MYRP in the midst of a worsening global pandemic and its subsequent economic fallout. OCA St. 2SR at 42. The OCA has recommended that PAWC's MYRP be rejected in its entirety. Id. However, if PAWC's proposed MYRP were to be adopted the OCA submits that an average rate base should be used for Rate Year 2 to mitigate the impact of the rate increase on customers. Id. at 44.

C. Rate Base Adjustment Relating to Amortization of EADIT

The rate base adjustment related to OCA's recommended three year amortization of unprotected EADIT is reflected in OCA App. A.2, Table II for each revenue requirement.

VI. REVENUES

PAWC argues that its proposed declining water usage adjustment to reflect declining residential and commercial consumption is supported by its witness' statistical analysis. PAWC M.B. at 18. The Company claims that OCA witness Smith has withdrawn his adjustment to

³² PAWC claims that the DSIC Supplemental Implementation Order establishes that utilities relying upon an FPFTY may establish its revenue requirement based on end of year plant in service balances and rate base. The DSIC Supplemental Implementation Order does not address multiyear rate plans (or whether average or end of year test years are utilized in an MYRP) and was entered almost two years before the Public Utility Code was amended to address the use of an MYRP. OCA St. 2SR at 43-44; 66 Pa. C.S. § 1330 (effective Aug. 28, 2018).

PAWC's 2020 residential revenue due to declining usage. PAWC M.B. at 19. The OCA, however, briefed the issue, testified on the adjustment at length, and included the adjustment in its schedules. See OCA M.B. at 26; OCA St. 2 at 48-55; OCA St. 2SR at 4; OCA Exh. LA-2, Sch. C-1. As such, if the Commission adopts the Company's MYRP, the OCA's recommended adjustment to a portion of PAWC's adjustment for 2020 future test year revenues due to declining water usage should also be adopted. OCA St. 2 at 53.

VII. OPERATING AND MAINTENANCE EXPENSES

A. Payroll Costs – Prorating Wage Increases

As a corollary claim in the discussion of payroll costs in the Company's brief, PAWC argues that the Commission has never approved OCA witness Smith's average test year methodology and has expressed the opposite viewpoint in UGI-Electric's 2018 base rate case. PAWC M.B. at 21. However, the Company's proposed MYRP is the first fully litigated MYRP in the Commonwealth.³³ OCA St. 2SR at 42. In fact, the use of an average rate base within the context of an MYRP has never been a subject of litigation before the Commission.

As a fallout adjustment to OCA's recommendation to utilize an average rate base instead of an end of year rate base in an MYRP approach, OCA witness Smith made an adjustment to the Company's salary and wages. OCA St. 2SR at 46. The OCA continues to recommend an adjustment to the Company's payroll costs if an MYRP is adopted.

B. Performance Based Compensation (PAWC and Service Co.)

PAWC argues that the OCA's position regarding the Company's performance based compensation (in the form of the APP and LTPP/Incentive Compensation Program) is contrary to

³³ The OCA notes that an average rate base adjustment is not necessary if the Commission denies the Company's MYRP.

Commission precedent. PAWC M.B. at 21-22. According to the Company, the performance compensation package is necessary to compete for and retain qualified employees. Id. at 23. PAWC further argues that, solely on the basis of OCA witness Smith’s lack of critique regarding the reasonableness of the Company’s overall compensation packages, OCA witness Smith’s partial disallowance of performance pay is “clearly wrong.” Id. PAWC notes that while some performance compensation plans award benefits based only on achievement of financial goals, the Company’s plan does not base compensation solely on financial goals. Id.

The Commission previously considered these arguments and disallowed Philadelphia Gas Works’ (PGW) incentive compensation plan due to a lack of support for PGW’s claimed inability to retain management without such a program.³⁴ The OCA submits that PAWC has not provided support for its claimed inability to retain management if its incentive compensation programs (both the APP and the LTPP) are not recovered in revenue requirement by charging its ratepayers. Moreover, the OCA’s adjustment is based on PAWC’s own stated goals for the program. See OCA St. 2SR at 33-35. PAWC’s affiliates in other states have recently been denied rate recovery of their incentive compensation programs, both partially and completely, for these very reasons.³⁵

In regard to its LTPP, the Company proposed to charge its ratepayers to fund the full amount of stock based compensation costs that are directly charged to PAWC and the stock based compensation costs that are included in the Service Company fees that are allocated to PAWC. OCA St. 2SR at 37. Stock-based compensation expense was previously a cost borne by shareholders. OCA St. 2 at 77. Moreover, the Company was not able to provide any studies that

³⁴ Citing Pa. P.U.C. v. PGW, 2007 Pa. PUC LEXIS 45, *75-76 (Sept. 28, 2007).

³⁵ Kentucky Public Serv. Comm’n, Electronic Application of Kentucky-American Water Co. for an Adjustment of Rates, Case No. 2018-00358 at 43-44 (July 27, 2019) (denied recovery of 50 percent of APP expense and 100 percent of LTPP for Kentucky American Water Company); California PUC, Application No. 16-07-002r, Decision No. 18-12-021 (Dec. 13, 2018) (reducing California American Water Company’s APP request by 50%).

demonstrated a quantitative benefit to ratepayers from the provision of stock-based compensation to PAWC and affiliated service company executives. Id. at 75-76. As such, the OCA recommends that PAWC's and its affiliate Service Company's costs for its LTPP should be eliminated from PAWC's cost of providing utility service for ratepayers. OCA St. 2SR at 50.

C. Capitalization Rate

PAWC states that its proposed capitalization rate should be adopted in this case because it used the same method "in many prior cases." PAWC M.B. at 24. The Company's capitalization rate has consistently increased each year. OCA St 2 at 82; OCA St. 2SR at 39. The Company, however, proposes capitalization rates for its MYRP consisting of the average of the capitalization rates for 2017, 2018, and 2019. Id. As the Company's capitalization rate has consistently increased year over year rather than fluctuating up and down, it is more reasonable to use PAWC's most recent capitalization rate, especially in the context of an MYRP.

VIII. TAXES

A. Taxes Other Than Income Taxes

If an MYRP is adopted, the OCA submits that average rate base treatment of taxes other than income taxes is appropriate for the reasons set forth in Section V.B, *supra*.

B. Income Taxes – Excess ADIT

OCA witness Smith recommended that the Company's EADIT be amortized over a three-year period using the straight-line method, rather than the period proposed by PAWC under the ARAM method. OCA St. 2 at 103. According to PAWC, the federal tax laws' lack of prohibition of a three-year amortization period does not mean that the Commission has the discretion to approve a three-year amortization period for unprotected EADIT. Id. at 31. The Company appears to argue that unprotected EADIT should be treated as protected EADIT despite its categorization

by the IRS as unprotected EADIT. PAWC M.B. at 31. The unprotected portion of the EADIT, however, is not subject to IRS normalization requirements and is within the Commission's discretion. OCA St. 2 at 107-08.

The Company's claim (PAWC M.B. at 31) that the Commission's discretion is limited because the OCA previously agreed in settlement to normalization of tax repair deductions, is unfounded.^{36,37} The treatment of the repairs deduction in a settlement³⁸ does not alter its status under the IRS categorizations nor the treatment to be afforded to the unprotected EADIT under the subsequent passage of the TCJA. The TCJA sets forth the parameters of the tax treatment and the Commission should exercise the discretion provided under the TCJA. In this case, it is critical that the Commission fully consider the difficult economic circumstances that argue for returning these dollars to ratepayers sooner rather than later.

The Company also characterizes OCA witness Smith's recommendation of a three-year amortization period as "accelerated." PAWC M.B. at 25. The OCA's recommended three-year amortization period for unprotected EADIT is consistent with other three-year amortization periods used by the Company to account for the TCJA. OCA St. 2 at 106. For example, PAWC experienced federal income tax savings from the federal income tax rate deduction from 35% to 21% during a "stub period" commencing January 1, 2018 and determined that returning the "stub period" tax savings over a three year period is reasonable. OCA St. 2 at 106. Additionally, PAWC

³⁶ It should be noted that the Company's prior rate case took place before the TCJA became law. Moreover, PAWC did not have an unprotected EADIT balance when the Company's previous base rate case was settled in 2017.

³⁷ PAWC's proposed settlement in this proceeding includes a 20 year straight-line amortization period for the unprotected EADIT balance. Clearly, PAWC believes the Commission has the discretion to determine an amortization period for unprotected EADIT, including tax repairs deductions, as the 20 years is not reflective of ARAM.

³⁸ PAWC also refers to a settlement reached in a 2018 Duquesne Light Company base rate case, in which flowback EADIT related to prior tax repairs and other deductions were amortized pursuant to ARAM. PAWC M.B. at 6, 35. That settlement is not binding precedent, however, and in no way limits the OCA from addressing the amortization period for unprotected EADIT proposed by PAWC. Of note, no present value analysis was performed in the 2018 Duquesne Light case. OCA St. 2SR at 28.

acknowledged in testimony that the three-year “Catch-Up” amortization period proposed by PAWC and the OCA are identical. See OCA St. 2SR at 17; PAWC St. 10R at 11. Moreover, PAWC also proposes to normalize its claimed regulatory and rate case expense over a three-year period, which generally reflects its historical rate case filing frequency. OCA St. 2 at 105. Further, Commissions throughout the country have utilized amortization periods that return the unprotected EADIT to customers over a shorter amortization period, as proposed by the OCA. For example, the California Public Utility Commission found that a two-year amortization period for unprotected EADIT was reasonable for PAWC’s affiliate, California-American Water Company.³⁹

PAWC also argues that the reduction in revenue requirement by using a three-year amortization is a “short-term effect” as the “entire no-cost tax loan represented by a three year EADIT amortization would be eliminated by December 31, 2023.” PAWC M.B. at 36. First, to be clear, the zero-cost capital that comprises the EADIT is not a loan from the government, but is a ratepayer-funded excess balance that needs to be returned to the ratepayers. OCA St. 2SR at 20. Second, PAWC’s approach would return the excess unprotected tax amounts back to ratepayers over multiple dates through approximately 2060, and fails to recognize that the ratepayers who funded the unprotected EADIT in the prior years through 2017, when the new 21% corporate tax rate was put into effect, will not be the same PAWC customers in 2060. OCA St. 2SR at 18. The OCA submits that a PAWC customer in 2060 is unlikely to be the same PAWC customer who

³⁹ Application of California-American Water Co., 2018 Cal. PUC LEXIS 628, *194-197 (Cal. P.U.C. Dec. 20, 2018); see also, In Re: Tennessee American Water Co.’s Response to the Commission’s Investigation on the Impact of Federal Tax Reform on the Public Utility Revenue Requirements, 2020 Tenn. PUC LEXIS 101, *4-10 (Aug. 3, 2020) (denied Tennessee American Water’s proposal to use ARAM after considering Mr. Wilde’s testimony and instead applied a three year amortization period of unprotected EADIT to Tennessee American Water); Proceeding on Motion of the Commission on Changes in Law that May Affect Rates, Case 17-M-0815, 2018 N.Y. PUC LEXIS 393 *82-84 (Aug. 9, 2018) (directed New York American Water Company to implement a sur-credit which utilizes a three-year amortization period for deferred tax savings, including unprotected ADIT); In the Matter of the Petition of New Jersey-American Water Co., Inc., with Calculation of Rates Under the Tax Cuts and Jobs Act of 2017, Docket Nos. AX18010001, WR18030233 at 3 (N.J. Bd. of Pub. Util., Oct. 28, 2020) (rejected New Jersey American Water Company’s ARAM proposal for unprotected EADIT and instead applied a fifteen year amortization period).

paid rates to PAWC through 2017. OCA St. 2SR at 18. A three-year amortization of unprotected EADIT helps to mitigate the rate impact during this difficult time, better reflects the benefits of the TCJA to ratepayers whose time value of money is higher than approximately 8% and promotes intergenerational equity. See OCA Exh. LA-9; OCA St. 2SR at 16-17, 19-20.

IX. RATE OF RETURN

PAWC argues that Mr. Rothschild's recommendations regarding his proposed capital structure and recommended cost of equity are flawed. PAWC M.B. at 43. PAWC asserts using anticipated year-end capital structure ratios for Rate Years 1 and 2 is appropriate because those ratios are indicative of those PAWC will maintain to finance its projected rate base during the period it proposed that its new rates would be in effect. Id. at 40. The OCA's capital structure, discussed further below, reflects current market data including the impact of the global pandemic. Further, as Mr. Rothschild explained, and Ms. Bulkley has acknowledged, COVID-19 has fundamentally changed capital markets. See, e.g., OCA St. 3 at 7-8, 14-18, PAWC St. 13 at 19. The OCA submits that the economic and financial effects of the pandemic on PAWC, its customers, and the economy as a whole cannot be known with reasonable certainty at this time. Therefore, the Commission should take a conservative approach on rate of return analysis and adopt Mr. Rothschild's position.

PAWC argues that Mr. Rothschild's proposed capital structure for water, based on the average of the equity ratios of his proxy group is "exactly the type of "hypothetical" capital structure previously rejected by the Commission." PAWC M.B. at 41. Mr. Rothschild disagrees with PAWC's proposed capital structure for its water operations because it has a significantly higher common equity ratio (56.06%) than the seven regulated water companies in his proxy group (51.64%). OCA St. 3 at 3-4, 13. It was unnecessary for Mr. Rothschild to address PAWC's

requested wastewater capital structure because it did not propose a higher common equity ratio than his proxy group. Therefore, the Company's argument should be rejected.

Next, the Company argues that Mr. Rothschild's proxy group was smaller than Ms. Bulkley's proxy group which undermines his results. PAWC M.B. at 41. Mr. Rothschild used a proxy group of seven water utilities while Ms. Bulkley utilized a proxy group of 13 utilities, including six water utilities and seven natural gas companies. PAWC St. 13 at 40-41. Ms. Bulkley stated that she included natural gas companies in her proxy group because the water utility proxy group was too small. Id. The OCA maintains that Ms. Bulkley's proxy group does not provide a sound basis for determining capital structure or cost of equity for PAWC as she improperly included natural gas companies in a water proxy group. The OCA submits that inclusion of natural gas companies in the proxy group skews the results, and utilizing a smaller proxy group containing only water utilities is superior to a larger proxy group containing a significant number of natural gas companies.⁴⁰ Therefore, PAWC's argument should be rejected.

PAWC discusses the differences between its calculations of the cost of equity and the OCA's calculations, including the methods employed in implementing the DCF model, CAPM, and expected earnings approach. See PAWC M.B. at 43-48. In an effort to avoid repetition, the OCA incorporates all of its Main Brief arguments herein by reference and discusses only pertinent issues raised in PAWC's Main Brief. However, the OCA continues to maintain that Mr. Rothschild's approach is reasonable and should be accepted by the Commission for the following reasons. Mr. Rothschild's approach is market-based, whereas Ms. Bulkley's is based upon expert forecasts. Particularly in a situation such as a global pandemic where market predictions are extremely volatile and uncertain, rate of return should be based upon current market data and not

⁴⁰ See Pa. P.U.C. v. Philadelphia Suburban Water Co., 1991 Pa. PUC LEXIS 206, *126 (1991) (rejecting use of a non-water utility barometer group in a water rate case).

expert opinions on what the market will do in the future, which is practically impossible to forecast. OCA St. 3 at 28-30, 66-69; OCA St. 3SR at 24-26. Additionally, Mr. Rothschild's approach considers the market impact of the pandemic, and PAWC's approach does not.⁴¹ The OCA submits that the reality of the pandemic's effects on the financial markets as well as on every aspect of the lives of PAWC's customers cannot be ignored.

PAWC argues that it should be allowed a ROE at the upper end of the 10.00-10.80% range recommended by Ms. Bulkley due to PAWC's management performance, or an adjustment of at least 25 basis points. PAWC M.B. at 48-49. Mr. Rothschild opposes this adjustment because of financial hardships caused by the COVID-19 pandemic. Specifically, he states that "[i]t is not an appropriate time to ask consumers to pay PAWC an additional 25 basis points." OCA St. 3 at 81. He also notes that PAWC should not receive both an acquisition premium and an ROE enhancement related to its acquisition of Delaware Sewer Company. Id. PAWC states that Mr. Rothschild's "primary assertion that the Commission's 2008 recognition of a water company's superior performance with an identical 25 basis point increase should not be applied here due to COVID-19 economic conditions ignores the fact that the Commission approved that 25 basis point increase during a major economic crisis (the 2008 Great Recession)." PAWC M.B. at 49. PAWC witness Bulkley's testimony contradicts PAWC's position. She admitted that "COVID-19 has caused an increase in the level of uncertainty in the market that exceeds the levels seen in the Great Recession of 2008/09." PAWC St. 13 at 13. Because of the uncertainty regarding the pandemic's effects on the financial positions of PAWC's customers, PAWC's request should be rejected.

⁴¹ See, e.g., OCA St. 3 at 27 ("The spread of COVID-19 has caused a historical financial crisis."); OCA St. 3 at 75 ("Consumer protection measures are particularly important now because of increased uncertainty and a decrease in consumers' capacity to pay for basic living expenses, including utility bills.").

X. REGIONALIZATION AND CONSOLIDATION SURCHARGE

PAWC's proposed Regionalization and Consolidation Surcharge (RCS or surcharge) is contrary to law and sound ratemaking policy and should be denied. OCA St. 1 at 70-79; OCA St. 1SR at 14-16. PAWC states that if its Non-Unanimous Settlement is adopted it will drop its RCS. PAWC M.B. at 50. However, if its Non-Unanimous Settlement is not adopted, PAWC's basis for the RCS is in Appendix C, Findings of Fact. Id., App. C at 26-31. PAWC does not address the lack of evidence supporting its RCS or the arguments raised by OCA against the surcharge.

PAWC's proposed surcharge would increase rates by as much as \$38.9 million or approximately 7.5% of the proposed revenue increase, solely due to specific acquisitions and is in addition to the \$19.1 million wastewater subsidy that it proposes to shift from the same acquisitions to water Rate Zone 1 customers. OCA St. 1 at 70-79; OCA St. 1SR at 14-17. The surcharge is not reasonable or necessary and does not meet the most basic requirements for an automatic rate adjustment. Id. The proposed surcharge is inconsistent with Section 1329, legal precedent regarding automatic adjustment clauses, and sound policy.

XI. PENSION/OPEB TRACKER

PAWC claims that establishing a tracker for annual pension and OPEB expense assures the Company recovers only its actual expenses. PAWC M.B. at 50-51. According to the Company, establishing a new surcharge yields substantial benefits to customers. Id. at 51.

The OCA submits that pension and OPEB expenses are standard ratemaking items and ongoing pension and OPEB liabilities are neither extraordinary nor nonrecurring. OCA St. 2 at 114; OCA St. 2SR at 57. The Company has not provided any supporting study or data for its claim that a new surcharge would yield significant benefits for its customers. The OCA continues to recommend that the Company's proposed pension and OPEB trackers be denied.

XII. RATE STRUCTURE AND RATE DESIGN

A. Introduction

OCA addressed its recommendations for water cost of service (agreed to by PAWC in rebuttal), wastewater cost of service, combined sewer cost of service studies, rate design, including the scale back if PAWC is granted any increases in revenue requirement, the allocation of wastewater revenue requirement to water customers, the allocation of Steelton water revenue requirement to water customers, and the necessity for the development of a stormwater rate. OCA St. 1 at 35-95, OCA St. 1SR at 6-9, 17-20. PAWC discussed its Non-Unanimous Settlement which the OCA will address in its Comments In Opposition. PAWC M.B. at 51-57. The OCA will address the arguments presented by PAWC, if any, on the contested issues.

B. Cost of Service Study

For the wastewater cost of service studies, the area of disagreement is the Company's inclusion of stormwater costs (as Infiltration and Inflow (I&I)). As explained *infra*, PAWC's combined sewer COSS is not reasonable because the failure to separate stormwater and sanitary sewer costs means costs are not accurately assigned. Wastewater (and water customers) bear costs that are not related to wastewater service. Thus, rates should be set on an across-the-board basis, which is a standard approach when there are major deficiencies in a COSS.

C. Rate Design Proposals

PAWC's Main Brief addresses only the Non-Unanimous Settlement provisions. The OCA will address the Non-Unanimous Settlement in its Comments in Opposition to the Settlement.

D. Allocation of Wastewater Revenue Requirement to Water Operations

PAWC's proposed allocation of wastewater revenue requirement (\$32.9 million in Year 1 and \$35.2 million in Year 2), to its water customers is not reasonable. OCA St. 1 at 53-54. PAWC

downplays the impact of its proposal (\$32.80 per year for an average customer) and should be rejected. See PAWC M.B. at 55. PAWC has not established that its proposed shift of wastewater revenue requirement is in the public interest.⁴² PAWC's proposal, shifting more than \$32 million or 4.9% in annual revenue requirement (41% of the total increase for water Zone 1 customers) is contrary to the basic ratemaking principles. OCA St. 1 at 51-70, OCA St. 1SR at 6-9.

PAWC argues that the OCA's recommendation, that a lower return be assigned to the portion of the rate base that is based on fair market value so that investors bear some share of the increased costs, is a violation of shareholders' constitutional rights. PAWC M.B. at 56. PAWC's argument is without merit. To the extent that a utility's existing customers subsidize the operating costs of the newly acquired systems, the utility's investors should bear the increased costs related to the ratemaking rate base through a reduced return. OCA St. 1 at 65-70. This approach is consistent with Section 1329 because although the ratemaking rate base approved in the application is included in rates, the statute does not mandate the rate of return that the utility is permitted to earn on the rate base. Id. "The effect of my recommendation would be to reduce the return allowed on the Section 1329 portion of the rate base until the acquired customers can fully support that investment." Id. The return to the utility is based on the return on total rate base, not the return on a specific item of rate base. Id. This approach would not result in a significant reduction in PAWC's overall return on its total rate base. Id.

PAWC argues that Section 1311(c) should be read together with Section 1329. PAWC M.B. at 56. The OCA has read them consistently and has also been mindful of Section 1301 requiring just and reasonable rates which also must be read together with Section 1311(c) and 1329. PAWC states, "The public interest is served if 1311(c) is used to make it economically

⁴² 66 Pa. C.S. § 1311(c).

feasible for a public utility to acquire a municipal wastewater system in a way that mitigates rate increases on customers of the acquired system without an unreasonable impact on the rates of water customers.” PAWC M.B. at 56. PAWC fails to consider the unreasonableness of the impact on other consumers of its proposal and the equities that must be considered. Using Section 1311(c) in combination with a Section 1329 acquisition “might result in water customers throughout the Commonwealth subsidizing municipal government purposes in a few locations while also promoting profit growth for utility shareholders. OCA St. 1 at 64.

PAWC argues that the OCA erroneously contends that Section 1311(c) “assumes” that the rate base will be set using depreciated original cost. PAWC M.B. at 56. When Section 1311(c) was enacted, rate base in wastewater service areas was, with minor exceptions, based on the original cost of the property. OCA St. 1 at 64. Mr. Rubin recommended that the Commission be extremely judicious in its use of Section 1311(c) discretion when Section 1329 acquisitions are involved. To use Section 1311(c) to subsidize Section 1329 acquisitions “might result in water customers throughout the Commonwealth subsidizing municipal government purposes in a few locations while also promoting profit growth for utility shareholders.” Id.

E. Allocation of Steelton Revenue Requirement to Other Water Operations

PAWC addresses the Non-Unanimous Settlement’s provisions regarding Steelton’s proposed increase and subsidy. PAWC M.B. at 56-57. The OCA will address the Non-Unanimous Settlement in its Comments in Opposition. The OCA recommends that the subsidy to be paid by water Zone 1 customers for Steelton should be set at \$926,829, with investors covering \$850,000, which would change the return by 0.0149%. OCA St. 1 at 70. The OCA’s recommendation should be adopted.

F. Separate Stormwater Rate

OCA recommended that PAWC be directed to propose a separate stormwater rate in its next rate case. OCA St.1 at 36-51. PAWC did not address OCA's position in its Main Brief, rather, it pointed to its Non-Unanimous Settlement and concluded that the Non-Unanimous Settlement addresses Mr. Rubin's concern. PAWC M.B. at 57. The OCA will address the provisions of the Non-Unanimous Settlement in its Comments in Opposition. A separate stormwater rate should be required in the next rate filing, and PAWC should be directed to propose a stormwater rate in its next rate proceeding.

XIV. LOW-INCOME CUSTOMER ASSISTANCE

A. Bill Discount Program

PAWC provides an "across-the-board" discount for its customers enrolled in its bill discount program (BDP). OCA St. 4 at 3, 8-43. That type of discount (even at the proposed level) does not sufficiently address the needs of the customers at 0-50% and 50-100% of the Federal Poverty Level (FPL). Id. PAWC claims that it cannot implement a tiered discount program because it does not have the information regarding its customers' income levels and that Mr. Colton's "preference" should not be adopted.⁴³ PAWC M.B. at 60-61. It is disingenuous for PAWC to say that it does not have the income levels of its BDP participants because PAWC obtains that information from its customers to determine eligibility to participate in the BDP. OCA St. 4SR at 7-9.

PAWC states that it has agreed that, no later than six months after a final order in this proceeding it will present an arrearage management plan to the Commission and that the plan will

⁴³Contrary to PAWC's contention, the tiered discount program is not Mr. Colton's "preference", it is his recommendation due to his analysis that the across-the-board discount does not adequately address the bill burdens for BDP customers who are at or below 100% of FPL. OCA St. 4 at 8-43.

be designed through a multi-party stakeholder process. PAWC M.B. at 60 citing CEO Stipulation ¶ 11. As this matches what OCA recommended (see OCA St. 4 at 29-39) and does not appear to be contingent on approval of the Non-Unanimous Settlement, this issue appears to be resolved.

C. Low-Income Customer Outreach, Data Collection and Reporting

PAWC claims that its “extensive outreach” is sufficient. PAWC M.B. at 62-63. PAWC’s existing outreach has resulted in enrollment of only 16.7% of its 119,859 income-eligible customers. OCA St. 4 at 44-59. An independent review of what PAWC can do to increase the enrollment of its eligible customers is reasonable. Id.

XV. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES

A. Customer Performance Service Standards

Objective standards and monitoring of those standards are a means to ensure that PAWC maintains and, where necessary, improves its level of performance relative to other major Pennsylvania utilities. OCA St. 5 at 30; OCA St. 5SR at 6.

PAWC incorrectly claims that the specific performance standards recommended by the OCA are not supported or arbitrary. The OCA addresses the evidentiary support for each of the proposed standards in its Main Brief and testimony, as follows:

Call Center Annual Average Speed of Answer	OCA M.B. at 96-97 OCA St. 5 at 7-8 and OCA Exh. BA-2 OCA St. 5SR at 14-15
Call Center Annual Abandonment Rate	
Average Monthly Response Time for Leaks	OCA M.B. at 94-95 OCA St. 5 at 9 and OCA Exh. BA-3 OCA St. 5SR at 12
Frequency of Main Breaks	
Kept Field Appointments	
Justified Complaints (per 1,000 customers)	OCA M.B. at 99 OCA St. 5 at 10-14 OCA St. 5SR at 8-9
Complaint Infractions	
Response Time to BCS Complaints	
Customer Billing Inquiries	OCA M.B. at 96. OCA St. 5 at 18-19

As discussed in more detail on the above-referenced pages of the OCA's Main Brief and testimony:

- Several performance standards (Frequency of Main Breaks, Kept Field Appointments, Response time to BCS complaints and Customer Billing inquiries) are based on information provided by PAWC regarding the level of performance it has currently or historically achieved.
- Additional performance standards are based on a comparison of data provided by PAWC to data compiled and reported by the Commission's Bureau of Consumer Services,⁴⁴ which shows that PAWC is substantially underperforming compared to other major Pennsylvania utilities (Call Center Annual Average Speed of Answer, Call Center Annual Abandonment Rate, Justified Complaints and Complaint Infractions). The OCA's specific recommended standards are intended to bring PAWC's performance in line with other utilities.
- For Average Monthly Response Time for Leaks, because PAWC does not currently track the time from the utility becoming aware of the incident until the repair is completed, the OCA recommended that PAWC begin to track leak information for breaks that disrupt service⁴⁵ and, based on that data, propose a performance standard within 60 days of the entry of the Commission's final Order in this proceeding.

The OCA's recommended performance standards are reasonable and clearly achievable because they reflect actual performance by PAWC itself or by other major Pennsylvania utilities.⁴⁶

In its Main Brief, PAWC incorrectly claims that the OCA seeks to impose a performance-based rate mechanism under Act 58 and, further, that denial of a base rate case or MYRP for failure to meet performance standards would be impermissible single-issue ratemaking. PAWC M.B. at 65. While MYRPs call out for performance standards, the OCA's recommendations are also founded in Section 523(a), which affirmatively requires the Commission to evaluate the

⁴⁴ The referenced data is from the BCS 2018 Customer Service Performance Report and 4Q 2019 UCARE Report, available at: https://www.puc.pa.gov/General/publications_reports/pdf/Customer_Service_Perform_Rpt2018.pdf https://www.puc.pa.gov/General/publications_reports/pdf/UCARE_2019-4Q.pdf

⁴⁵ In response to the concern raised by PAWC witness Clarkson that some leaks are not addressed as quickly as those that disrupt service, *e.g.*, breaks that do not result in an outage and leaks on customer-owned service lines, the OCA agreed that response time data could be limited to breaks that disrupt service. OCA M.B. at 95.

⁴⁶ The OCA also recommends that PAWC be required to submit quarterly reports regarding its performance in the areas addressed by the standards. If the reports show a persistent failure to meet performance standards, the OCA submits that Commission should open an investigation. If the Commission approves a MYRP, the OCA recommends that approval should include penalties for non-compliance – because of the risk that rates would automatically increase in the second year even if service quality deteriorates. OCA St. 5 at 24-25.

“efficiency, effectiveness, and adequacy of service” in a base rate case, and Section 1504, which gives the Commission express statutory authority to prescribe “just and reasonable standards, classifications, regulations and practices to be furnished, imposed, observed and followed by any or all public utilities.”⁴⁷ Moreover, the Commission is specifically permitted to reject, in whole or in part, a utility’s request to increase its rates where it is determined that service rendered is inadequate⁴⁸ and to make adjustments to “specific components of the utility’s claimed cost of service as it may determine to be proper and appropriate” to reflect the efficiency, effectiveness and adequacy of service when determining just and reasonable rates.⁴⁹ As noted in the OCA’s Main Brief, the Commission has previously imposed performance standards in a base rate proceeding.⁵⁰

Thus, based on the legal and evidentiary support discussed above and in the OCA’s Main Brief and testimony of OCA witness Alexander, the performance standards recommended by the OCA and associated quarterly reporting requirement should be adopted. If an MYRP is approved, the OCA requests that the Commission impose penalties for non-compliance in order to ensure that PAWC is improving, or at a minimum, maintaining service quality performance while increased rates under the MYRP are in effect.

B. Call Centers

In its Main Brief, the OCA recommended that PAWC take steps to improve the monthly performance of its call centers, which would, in part, require the Company to establish the proposed performance standards discussed in the preceding Section. The data provided by PAWC

⁴⁷ 66 Pa. C.S. §§ 523(a), 1504.

⁴⁸ 66 Pa. C.S. § 526(a).

⁴⁹ 66 Pa. C.S. § 523(a).

⁵⁰ Pa. P.U.C. v. Philadelphia Gas Works, Docket No. R-00005654, Order at 33-34 (Nov. 22, 2000).

shows extremely poor performance in its ability to answer calls in a timely manner and avoid a significant abandonment rate. OCA St. 5 at 7. The data supports the following conclusions:

- The 2018 results are not reasonable and significantly below what is tolerated at other Pennsylvania utilities.
- The 2019 results show improvement but are still below best practices.
- The 2020 results reflect a very poor performance in January with some improvement due in part to the reduced volume of calls evident in April associated with the COVID-19 pandemic and the moratorium on termination of service.

OCA M.B. at 96; OCA St. 5 at 7-8. While PAWC's performance improved from 2018 to 2019, OCA witness Alexander also pointed out that there is a dramatic swing in call center performance from month to month in 2019 and 2020, which indicates an ongoing difficulty in meeting a reasonable target performance on a routine basis. OCA St. 5 at 8; OCA Exh. BA-2.

PAWC argues that no standards are warranted because its performance in 2018 was an anomaly, which it attributes to abnormally severe weather conditions. PAWC M.B. at 65. High call volume should not impact call center performance because the stated advantage of having call centers located in different regions of the country is so that calls can be routed and staffing altered to meet regional events, like winter storms. OCA St. 5SR at 15; PAWC St. 18R at 4. Moreover, the data shows that some of the highest abandonment rates and longest wait times occurred in the non-winter months of September 2018 and July and August 2019. OCA Exh. BA-2. Further, as noted above, the Company's performance in 2019, while improved compared to 2018, was still below the average performance of other major Pennsylvania utilities during the same year and varied widely from month to month. OCA St. 5 at 7-8. Customers who call PAWC in any month should be provided with reasonable customer service.

The OCA makes an additional recommendation, that PAWC conduct regular audits of its call centers in Kentucky and Tennessee, which are operated by third-parties, to ensure they are complying with Pennsylvania-specific requirements and report the result of the audits to BCS as

part of the quarterly customer complaint analysis recommended in Section XV.C, below. PAWC objects to this additional oversight on the basis that its consumer service representatives (CSRs) in third-party call centers receive the same Pennsylvania-specific training as the call centers operated by PAWC's parent company. PAWC M.B. at 66-67. The difference is that the third-party call centers handle outbound calls to customers who have received a termination notice. OCA St. 5SR at 13, 16, 17. The documentation regarding BCS-verified infractions shows a repeated instance of PAWC representatives threatening termination prior to resolution of a dispute. OCA St. 5 at 11 (citing PAWC Response to OCA-IX-002). Thus, it is particularly important that these call center representatives are adequately trained and supervised to provide all of the Pennsylvania-specific rights and remedies to customers when discussing how to respond to a termination notice. OCA St. 5SR at 16.

PAWC also argues that the third-party call centers are already monitored on a daily basis – more frequently than the auditing that the OCA recommends. PAWC M.B. at 66-67. There is a difference between the call monitoring that PAWC currently conducts and the audits recommended by the OCA. OCA witness Alexander explained there is more needed in the evaluation of Pennsylvania-specific issues than the daily monitoring that PAWC currently does. OCA St. 5 at 14 (citing PAWC Response to OCA-IX-013, Attachment) (other internal footnote omitted); see also OCA St. 5SR at 17 (citing PAWC Response to OCA-XX-004 (T) (Confidential)). Accordingly, the OCA's recommended performance standards for all PAWC call centers and requirement for regular auditing and quarterly reporting for third-party call centers are reasonable and appropriate steps to improve the performance of the call centers.⁵¹

⁵¹ The OCA also recommends that PAWC be required to provide these proposed script modules to the stakeholders prior to their implementation, to accommodate a review of these instructions and scripts to ensure compliance with Chapter 56 and PAWC's commitments to offer its low-income program to customers with payment difficulties. OCA St. 5SR at 18.

C. Customer Complaints

1. Reporting on PAWC's Analysis of Root Causes of Disputes and Complaints and Response to Identified Trends

The OCA recommends that PAWC be required to submit a quarterly analysis to BCS of its complaint trends, which identifies the underlying root cause of the disputes and complaints and documents the steps taken to respond to this analysis. OCA St. 5 at 9-13; OCA St. 5SR at 8-9. The root cause analysis should review why the customer's communication with PAWC resulted in a dispute and how the customer service representative handled the initial communication, as well as the evaluation of the PAWC training materials and the integration of PAWC's field and maintenance staff for investigations of leaks and billing issues. OCA St. 5 at 12.

PAWC objects to this recommendation, claiming that its performance with respect to customer complaints and its customer survey results are satisfactory. PAWC M.B. at 67. OCA witness Alexander recognized a reduction in BCS informal complaints from PAWC customers in 2019 compared to 2018. OCA St. 5 at 11-12. The fact remains that PAWC's 2019 performance still showed significant justified complaints, a high percentage of payment arrangements and a high number of verified "infractions" related to Chapter 56 compliance.⁵² *Id.* at 10-11. This data shows that further improvements are needed and that a closer supervision of PAWC's complaints and disputes and associated trends and causes is necessary.⁵³

⁵² 2019 Utility Consumer Activity Report and Evaluation for Quarters 1-4 (4Q 2019 UCARE Report).

⁵³ PAWC also argues that BCS has ample opportunity to monitor its performance and can request additional information if it so chooses. This does not respond to the OCA's concern that – based on PAWC's existing reporting – BCS found that PAWC failed to apply the proper policies in handling the customer's interaction. OCA St. 5SR at 8. These findings support the OCA's recommendation for a more frequent, and mandatory, reporting mechanism.

2. Complaint Logs

The Company did not address the OCA's recommendation to provide complaint logs in live Excel format and to include information about the final disposition of the complaint as required by 52 Pa. Code § 65.3. The OCA's recommendation should be adopted.

D. Customer Satisfaction Surveys

The OCA recommends that PAWC develop a program of routine customer satisfaction surveys consistent with those approved by BCS for major Pennsylvania electric and gas utilities. OCA St. 5 at 18; OCA St. 5SR at 9-10. PAWC objects, arguing that it already conducts routine surveys to measure customer satisfaction. PAWC M.B. at 68. As explained by OCA witness Alexander, PAWC's "survey" is made up of only two questions – whether customers are "overall satisfied with American Water" and about the "overall performance" by the CSR. OCA St. 5 at 18 (citing PAWC Response to OCA-I-001, Att. 7). The questions are insufficient because they do not obtain more detailed information concerning the customer's review of the actual recent transaction. OCA St. 5 at 18. The BCS-approved survey used by major Pennsylvania electric and gas utilities obtains information from customers about their experience in reaching the utility, using the automated phone system and interacting with the customer representative, in addition to their overall satisfaction.⁵⁴ OCA St. 5 at 18. PAWC also objects on the basis that the BCS-approved surveys are not applicable to water and wastewater utilities. PAWC M.B. at 67-68. Although the surveys originated from statutes and rulemakings related to electric and gas utilities,

⁵⁴ The BCS customer satisfaction surveys for electric and gas utilities are described and presented in the annual Customer Service Performance Reports available at http://www.puc.state.pa.us/filing_resources/customer_service_performance_reports.aspx. The report for 2019, for example, discusses the common survey process, questions and results on pages 18 to 26. <https://www.puc.pa.gov/media/1187/customer-service-report2019.pdf>. Reports are posted for the past 20 years and indicate the same questions related to customer satisfaction have been utilized since 2002.

the questions asked in the surveys are not industry-specific and are equally applicable to PAWC and the measurement of its customers' satisfaction. OCA St. 5SR at 9.

E. Training on Termination of Service

OCA witness Alexander raised a concern that the instructions and training provided to PAWC's field personnel for personal contact prior to termination do not address situations where the law requires the utility representative to halt the termination process. OCA St. 5 at 17-18; OCA St. 5SR at 10-11. This matter has been resolved by PAWC's agreement "to review and revise its training documents to include additional scenarios and written instructions for: (1) an allegation of a pending dispute or complaint; and (2) and allegation of a PFA Order or a court order that shows evidence of domestic violence. PAWC M.B. at 68; PAWC St. 17R at 14.

The OCA also raised a concern that the utility representative may encounter other potential situations where it may be appropriate, even if not mandated, to halt the termination process. For example, encountering children at the door or evidence of lack of understanding due to language or mental disability, suggest that there would be a threat to health and safety if the termination was implemented at that time. OCA St. 5SR at 10-11. PAWC's training documents do not expressly include these additional situations. OCA St. 5 at 18; OCA St. 5SR at 10-11.

PAWC has acknowledged that when field representatives "encounter circumstances not specifically identified in the law or PUC regulation, they are instructed to contact their supervisor and/or business performance team members before terminating service." PAWC M.B. at 68-69. The OCA agrees with this overall approach, however, the OCA recommends that PAWC modify its training materials to explicitly empower the employee to use their discretion to withdraw and seek guidance from management before terminating service, when they do observe an unusual condition that could result in danger or harm from termination. OCA St. 5SR at 11.

F. Pressure Surveys and Pressures

PAWC opposes Mr. Fought's recommendation that PAWC install a pressure reducer on the customer service line or provide an insurance policy covering service line damage if pressures exceed 125 psi. PAWC M.B. at 69. The Company states that terrain and elevation changes demand providing service in excess of 125 psi in certain circumstances and that its tariff requires that the customer install and maintain a pressure regulator in these cases, not the Company. Id. Mr. Fought stated that the customer is required to install a pressure regulator on the inlet side of the meter when the static pressure is in excess of 100 psi. OCA St. 6SR at 11. As explained by Mr. Fought, in many instances, the pressure regulator is installed inside the building and protects the meter and the interior plumbing from high pressures. Id. However, this does not protect the customer's service line between the curb box and the building from higher pressures. Id. Therefore, the OCA continues to recommend that PAWC install pressure regulators if pressures exceed 125 psi or provide an insurance policy covering repair or replacement of the service line.

G. Main Extensions

The OCA recommended two main extensions to Area 1 and Area 2 that meet the criteria for main extensions set forth in Tariff Rule 27.1(F).⁵⁵ OCA St. 6 at 6-10; OCA St. 6SR at 12-18. PAWC identifies three reasons why it should not be required to extend the proposed mains: (1) the main extension would serve one or two customers and would require PAWC to spend more than the amount required under Tariff Rule 27.1; (2) only serving one or two customers may result in water quality issues; and (3) Steubenville Pike is not located within PAWC's service territory. PAWC M.B. at 69-70. The OCA submits that the consumers in Areas 1 and 2 meet the health and/or safety criteria set forth in Tariff Rule 27.1(F), and PAWC has not presented evidence to

⁵⁵ Detailed descriptions of Areas 1 and 2 are included at pages 7-8 of OCA witness Fought's Direct Testimony.

refute that the consumers have alleged health and/or safety concerns that meet the criteria in Tariff Rule 27.1(F). OCA St. 6 at 6-8; OCA St. 6SR at 13-16.

PAWC misunderstands the OCA's proposal and does not appear to have evaluated whether there may be other potential customers for either Area 1 or Area 2. The OCA did not propose that the Area 1 main extension be limited to one customer, but instead, the one customer may be the last of the customers in the area that need a main extension. As OCA witness Fought testified, "a main was extended in the area two other times pursuant to Tariff Rule 27.1[F] as a result of the settlements of the 2013 and 2017 base rate proceedings."⁵⁶ OCA St. 6SR at 14. Moreover, the OCA continues to recommend that PAWC evaluate whether other potential customers may be in the area.⁵⁷ The Area 1 request for a main extension should be evaluated in this context.

For Area 2, PAWC argues that the OCA has only identified two customers and that there could be water quality degradation issues as a result for the length of the proposed extension with only two customers. PAWC M.B. at 70; PAWC St. 3R at 13-14.⁵⁸ PAWC's analysis is based on the flawed premise that the OCA is only recommending that two customers be connected in the area. While the OCA has only been contacted by two customers in the area of Campbell Road and Steubenville Pike, there may be approximately 20 customers in the area. OCA St. 6SR at 16. The OCA submits that the Company should examine connecting these additional customers.

PAWC also argues that the costs of the Area 1 and Area 2 main extensions require it to spend many times more than the amount the Company is required to expend pursuant to Tariff Rule 27.1. PAWC M.B. at 70. The OCA notes that PAWC's cost evaluation is limited because

⁵⁶ See Pa. P.U.C. v. Pennsylvania-American Water Co., Docket No. R-2013-2355276, Order (Dec. 19, 2013); Pa. P.U.C. v. Pennsylvania-American Water Co., Docket No. R-2017-2595853 (Dec. 7, 2017).

⁵⁷ Mr. Fought testified that he "would encourage the Company to survey the area and identify possible additional opportunities to extend the main to similarly-situated customers." OCA St. 6SR at 14.

⁵⁸ PAWC witness Aiton's Rebuttal Testimony only raised water quality issues with respect to Area 2 customers. PAWC St. 3R at 13-14.

the Company has only estimated the costs of connecting one customer for Area 1 and two customers for Area 2 and has not evaluated whether other potential customer connections would be possible. OCA St. 6SR at 14-16. The OCA further submits that PAWC's cost calculation does not include any potential third party funding sources for Area 2 customers or the possible cost offset of applying for low-interest PENNVEST loans for either Area 1 or Area 2.

More to the point, the standard for evaluating the proposed main extensions in this case is Tariff Rule 27.1(F) which does not look at costs in the light of a Contribution in Aid of Construction (CIAC) as PAWC argues.⁵⁹ PAWC M.B. at 70. Tariff Rule 27.1(F) is the exception to the rule set forth in Tariff Rule 27.1 which PAWC relies upon and specifically does not include any requirement for a CIAC for health and/or safety main extensions.⁶⁰ Tariff Rule 27.1(F) also does not apply a cap to the costs of the main extensions because the purpose of Tariff Rule 27.1(F) is to address situations where there is a significant health and/or safety need for service that might otherwise be cost-prohibitive. Applying the same cap as set forth in Tariff Rule 27.1 would completely eliminate the need for the exception created by Tariff Rule 27.1(F).

PAWC argues that Steubenville Pike is not located within the Company's certificated service territory. PAWC M.B. at 70. The fact that Steubenville Pike is currently outside of the Company's service territory should not be considered an impediment. OCA St. 6SR at 15.⁶¹ Also, the OCA notes that the area is adjacent to PAWC's service territory and near another customer

⁵⁹ Pennsylvania-American Water Company Water Tariff, Supplement No. 2 to Tariff Water Pa. PUC No. 5, First Revised Tariff Pages No. 89 (effective Jan. 1, 2018).

⁶⁰ Id.

⁶¹ Subject to Commission approval, the Company could apply for a certificate of public convenience under Sections 1102(a) and 1103(a) of the Public Utility Code to extend its service territory to serve these potential customers. 66 Pa. C.S. §§ 1102(a), 1103(a). Since PAWC is already a certificated public utility in Pennsylvania, the Commission may apply the standard of "continuing fitness to serve" to the application. See Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990); Re V.I.P. Travel Servs., Inc., 56 Pa. P.U.C. 625, 631 (1982).

who received a main extension as a result of the Company's 2017 base rate proceeding. Id. The customers do not currently receive water service from any other entity.⁶²

The OCA submits that the proposed main extensions for Areas 1 and 2 meet the health and safety criteria in Tariff Rule 27.1(F) and, as such, should be approved. OCA St. 6 at 6-10; OCA St. 6SR at 12-18.

H. Sewage Backups

The only outstanding issues related to sewage backups are Mr. Fought's recommendations that PAWC be required to 1) ensure that implementation of the LTCPs does not cause more sewage backups in existing or new service areas and 2) provide information to its customers that have basements connected to combined sewers informing them on how to eliminate sewage backups. OCA St. 6SR at 5-6. The Company did not address these recommendations. As such, the OCA's position should be adopted.

XVI. TARIFF CHANGES

A. Limitation of Liability

The OCA objects to PAWC's limitation of liability proposal because the Company's language (1) would limit its liability for negligent actions for injury or damages that are not related to interruption or cessation of service, (2) would limit its liability for injury or damage resulting from intentional actions (*i.e.* reckless or intentional behavior) and (3) contains so many conditions that it effectively exculpates PAWC from liability. OCA St. 5 at 22-23.

⁶² The OCA notes that prior to the alleged fracking incident that impacted the aquifer serving the Area 2 customers, PAWC also appears to have previously explored the idea of serving the customers on Steubenville Pike. Id. at 15-16.

PAWC argues that the OCA's position is inconsistent with the Policy Statement addressing limitation of liability. PAWC M.B. at 73.⁶³ The Company overstates the scope of the Policy Statement. First, the Policy Statement specifies that "State law permits utilities to limit their liability for interruption or cessation of service."⁶⁴ PAWC's proposed language is broader and would apply to injury or damages that are not related to interruption or cessation of service, such as personal injury. This is directly contradicted by the Commission's statement that:

'The limitation may apply in the event of interrupted service or property damage only, and not personal injury. No consumer should be expected to bear the burden of personal injury or death in order to maintain reasonable rates for all consumers.'⁶⁵

Second, the Policy Statement does not support limiting liability for reckless and intentional actions, as PAWC proposes to do. The PUC distinguished between a "negligent" act of omission and more serious misconduct characterized as "reckless" or "willful" and determined that it "is appropriate to permit limitations on liability for negligent acts in certain cases."⁶⁶ This is consistent with the cases cited in the Policy Statement and PAWC's brief.⁶⁷ Neither DeFrancesco nor Behrend support limiting liability for reckless or intentional acts, they address negligence only. PAWC's existing water tariff limits liability for negligence only and the Company should not be permitted to broaden that language to include reckless and intentional acts.

The final matter of contention is that, even with regard to negligent acts, PAWC's proposed limitation is too broad. As noted in the Policy Statement, liability may be limited, but the utility

⁶³ Citing Tariff Provisions that Limit the Liability of Utilities for Injury or Damage as a Result of Negligence or Intentional Torts, Policy Statement, 29 Pa.B. 2147-49 (Nov. 19, 1998).

⁶⁴ 52 Pa. Code § 69.87.

⁶⁵ 29 Pa.B. 2147 (emphasis added). In the Policy Statement, the Commission adopts (and quotes at length from) the analysis in a March 17, 1997 Declaratory Order. The Commission specifies that while the 1997 Declaratory was vacated, "we did not abandon the above-cited analysis of the March 17, 1997, Declaratory Order." 29 Pa.B. at 2148.

⁶⁶ Id. at 2148.

⁶⁷ DeFrancesco v. West Penn Water Co., 329 Pa. Super. Ct. 508, 478 A.2d 1295 (1984) (DeFrancesco); Behrend v. Bell, 242 Pa. Super. Ct. 47, 363 A.2d 1752 (1976), vacated on other grounds, 473 Pa. 320, 374 A.2d 536 (1977) (Behrend); OCA St. 5 at 22-23.

may not be totally exculpated from exposure to damage claims.⁶⁸ It is not readily apparent to what circumstances one or more of the conditions that PAWC proposes to include in Section 15.1 would not apply to limit liability. OCA St. 5 at 22-23; OCA St. 5SR at 18-19. For all of these reasons, PAWC's proposed language for limiting its liability should not be approved.

B. Chapter 56 Customer Protections to Be Included in Tariff

PAWC's existing and proposed tariff rules and regulations do not reference, identify or describe, even at a high level, how the Company applies Chapter 56 and other essential consumer protections required for residential customers. OCA St. 5 at 20-21; OCA St. 5SR at 11. PAWC witness Dean opposed the OCA's recommendation to revise its tariff to address the principal omissions identified by OCA witness Alexander. PAWC St. 17R at 14. The Company provides no substantive support for its opposition in its Main Brief. Instead, the Company states that it has agreed to revise its tariff consistent with the OCA's recommendation as a term of the proposed, non-unanimous settlement. PAWC M.B. at 74. Whether or not the settlement is approved, the OCA's recommended revisions to the tariff should be made because it is not reasonable for PAWC to fail to explain how it will adhere to mandatory consumer protections. Please see the testimony of Ms. Alexander for further discussion. OCA St. 5 at 20-21; OCA St. 5SR at 11.

⁶⁸ 29 Pa.B. at 2148 (citing DeFrancesco).

XVII. CONCLUSION

The OCA respectfully requests that the Commission deny any rate increase to PAWC at this time. The Company's customers are experiencing substantial economic and personal hardships as a result of the continuing COVID-19 pandemic, and any rate increase at this time would not result in just and reasonable rates. Should the Commission determine, however, that it will proceed in a business as usual manner, then the OCA's alternative positions and adjustments should be adopted and PAWC should receive a rate reduction in water and minimal increases in wastewater, and its request for a multiyear rate plan should be denied. In addition, its proposed trackers should be denied and other actions taken as set forth in the OCA's Main and Reply Briefs.

Respectfully submitted,

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

/s/Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

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

Counsel For:
Tanya J. McCloskey
Acting Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Lauren E. Guerra
Assistant Consumer Advocate
PA Attorney I.D. # 323192
E-Mail: LGuerra@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Dated: November 19, 2020