



COMMONWEALTH OF PENNSYLVANIA

November 20, 2020

E-FILED

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), R-2020-3019371 (Wastewater)**

Dear Secretary Chiavetta:

Enclosed please find the Comments, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on the parties indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

Erin K. Fure
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For: John R. Evans
Small Business Advocate

**Commonwealth of Pennsylvania
Office of Small Business Advocate
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Harrisburg, PA 17101**

Date: November 20, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
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**COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE TO THE
NON-UNANIMOUS SETTLEMENT**

I. INTRODUCTION AND PROCEDURAL OVERVIEW

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”).

On April 29, 2020, Pennsylvania-American Water Company (“PAWC” or the “Company”) filed Supplement No. 19 to Tariff Water-- PA P.U.C. No. 5 and Supplement No. 19 to Tariff Wastewater-- PA P.U.C. No. 16 to become effective on June 28, 2020. In its April 29, 2020 tariff filings, PAWC sought an increase in the rates of its water and wastewater operation based on a multi-year rate plan (“MYRP”) that would produce additional operating revenues of \$92.4 million in Year 1 and \$46.2 million in Year 2, for a combined increase of \$138.6 million over two years.¹ Also in its tariff filings, PAWC sought approval to establish a Regionalization

¹ PAWC Statement No. 1, p. 7.

and Consolidation Surcharge (“RCS”) and tracker mechanisms for pension and other post-employment benefit (“OPEB”) expenses (“pension and OPEB tracker”).²

Litigation involving PAWC’s tariff filings ensued, with the OSBA, the Office of Consumer Advocate (“OCA”), the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Commission on Economic Opportunity (“CEO”), the Pennsylvania-American Water Large Users Group (“PAWLUG”), and AK Steel Corporation (“AK Steel”) participating in the proceedings.

On October 30, 2020, PAWC, I&E and PAWLUG (collectively, the “settling parties”) filed a *Joint Petition for Non-Unanimous Settlement of Rate Investigation* (“*Non-Unanimous Settlement*”). The OSBA is not a signatory to the *Non-Unanimous Settlement*.

The *Non-Unanimous Settlement* contains various terms that were reached between the settling parties, including, but not limited to: (1) a revenue increase of \$70.5 million, to be offset by an annualized credit of \$10.5 million in each of the years 2021 and 2022, (2) the withdrawal of PAWC’s request for a MYRP, (3) the withdrawal of PAWC’s proposed RCS, and (4) the withdrawal of PAWC’s proposed pension and OPEB tracker.

On November 5, 2020, Administrative Law Judge (“ALJ”) Conrad A. Johnson issued a Third Interim Order directing that any comments to the *Non-Unanimous Settlement* be filed by November 20, 2020. The OSBA submits the following Comments to the *Non-Unanimous Settlement* in accordance with ALJ Johnson’s Third Interim Order.

² PAWC Statement No. 1, p. 25-26.

II. COMMENTS TO *NON-UNANIMOUS SETTLEMENT*

A. Revenue Requirement

Paragraph 23 of the *Non-Unanimous Settlement* provides for additional annual water and wastewater operating revenues in the amount of \$70.5 million, which will be offset by an annualized credit of \$10.5 million in each of the years 2021 and 2022.³

As noted and more fully argued in the OSBA's Main Brief and Reply Brief, as well as in Mr. Kalcic's direct testimony, the OSBA does not support any revenue increase for PAWC at this time. On March 6, 2020, Governor Tom Wolf issued a *Proclamation of Disaster Emergency* ("Executive Order") attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19. At the time of the filing of these comments, the COVID-19 pandemic continues to wreak havoc in Pennsylvania, resulting in economic disruption. As noted in Mr. Kalcic's direct testimony, the US unemployment rate was 8.4% as of August, 2020;⁴ the Pennsylvania unemployment rate was 13.7% as of July, 2020;⁵ the total US small business revenue was down 19.1% from January, 2020, with PA small business revenue down 24.0% for the same period;⁶ and the total US small businesses openings were down 19.1% from January, 2020, with PA small business openings down 14.5% for the same period.⁷ This is not a period of "business as usual" for Pennsylvania small businesses, and should not be considered "business as usual" for Pennsylvania utilities, who serve these suffering small businesses.⁸ PAWC's request for a rate increase should be denied in its entirety at this time due to the ongoing COVID-19 pandemic and its devastating impact on Pennsylvania's economy. All of the Company's ratepayers have been

³ *Non-Unanimous Settlement*, pp. 8-9.

⁴ <https://fred.stlouisfed.org/series/UNRATE>

⁵ <https://www.bls.gov/regions/mid-atlantic/pennsylvania.htm#eag>

⁶ <https://tracktherecovery.org>; reviewed by Mr. Kalcic on September 4, 2020.

⁷ <https://tracktherecovery.org>; reviewed September 4, 2020.

⁸ *Id.*

affected, and many have been overwhelmed, by the pandemic. It would be inappropriate to award PAWC a rate increase at a time when its customers are experiencing rampant joblessness and business closings.

Furthermore, there exists no substantial evidence in the evidentiary record to support the \$70.5 million revenue requirement agreed to in the *Non-Unanimous Settlement*. “A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). In this case, the settling parties’ request for approval of the *Non-Unanimous Settlement* must be denied.

B. Alternative Ratemaking Mechanisms

PAWC agreed to withdraw its request for the RCS, pension and OPEB tracker, and the second year of its MYRP in Paragraph 33 of the *Non-Unanimous Settlement*.⁹ The OSBA supports PAWC withdrawing its request for these alternative ratemaking mechanisms, for the reasons stated in the OSBA’s Main Brief.

C. Customer Assistance Programs and COVID-19

Paragraphs 34 through 69 outline PAWC’s commitments regarding various customer assistance programs.¹⁰ The OSBA takes no issue with the commitments made in these paragraphs.

⁹ *Non-Unanimous Settlement*, p. 11.

¹⁰ *Non-Unanimous Settlement*, pp. 11-17.

D. Cost Allocation and Rate Design

Paragraphs 70 and 71 outline the settling parties' agreed-upon water rate structure, rate design and distribution of the increase in revenues.¹¹ The OSBA takes no issue with the commitments made in these paragraphs.

E. Effective Date

Paragraphs 72 and 73 outline the settling parties' agreement regarding the effective date for the rate increase.¹² The OSBA takes no issue with the commitments made in these paragraphs.

III. CONCLUSION

In view of the foregoing as well as the arguments set forth in the OSBA's Main Brief and Reply Brief, the OSBA respectfully requests that the ALJs and Commission reject the *Non-Uniform Settlement*.

Respectfully submitted,

/s/ Erin K. Fure

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Dated: November 20, 2020

¹¹ *Non-Uniform Settlement*, pp. 18-20.

¹² *Non-Uniform Settlement*, pp. 20-21.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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