



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 Reply Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

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

Sincerely,

/s/ Erin K. Fure

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Attorney ID No. 312245

*Enclosures*

cc: Brian Kalcic  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: November 20, 2020**

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## 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. PAWC’s tariff filings sought approval of rates and rate changes which would increase total annual operating revenues of the Company by \$138.6 million over two years (\$92.4 million in 2021 and \$46.2 million in 2022).

On April 29, 2020, Jessica and Jeffrey Labarge filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019627). On April 30, 2020, Mr. and Mrs. Gerald S. Lepre, Jr. filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019646).

On May 1, 2020, State Representative Austin Davis filed a letter in opposition to PAWC’s filings. On May 5, 2020, State Senator Judith L. Schwank filed a letter in opposition to PAWC’s filings. On May 7, 2020, the Office of Consumer Advocate (“OCA”) filed its Notice of Appearance and Formal Complaint (docketed at Nos. C-2020-3019751 and C-2020-3019754). The Commission’s Bureau of Investigation and Enforcement (“I&E”) also filed its Notice of Appearance on May 7, 2020.

On May 11, 2020, the OSBA filed its Notices of Appearance and Formal Complaint (docketed at Nos. C-2020-3019767 and C-2020-3019772). On May 12, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene. On May 12, 2020, Victoria Lozinak filed a Complaint in opposition to PAWC’s

filings (docketed at No. C-2020-3019778). The Commission on Economic Opportunity (“CEO”) filed a Petition to Intervene on May 18, 2020.

By Order entered May 21, 2020, the proposed 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 were suspended by operation of law until January 28, 2021. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed 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.

A PreHearing Conference Order and Notice were issued on May 22, 2020 scheduling a telephonic prehearing conference in this matter for June 4, 2020 before Administrative Law Judge (“ALJ”) Conrad A. Johnson.

On May 28, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company’s Base Rate Proceedings. On June 1, 2020 CAUSE-PA filed an Answer in Support of the OCA’s motion.

On June 2, 2020, AK Steel Corporation (“AK Steel”) filed a Notice of Appearance, Petition to Intervene, and Motion for Admission Pro Hac Vice.

A telephonic PreHearing Conference was held on June 4, 2020, at which time the OCA’s motion was granted and a litigation schedule was determined. The litigation schedule was memorialized in an Order issued on June 15, 2020.

On June 18, 2020, PAWC filed Supplement No. 21 to Tariff Water-PA P.U.C. No. 5 and Supplement No. 21 to Tariff Wastewater-PA P.U.C. No. 16 further suspending the proposed rates’ effective date until March 15, 2021.

On June 24, 2020, PAWC filed a Petition for Reconsideration seeking reversal of the Order granting the OCA's motion to extend the statutory suspension period.

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

On August 20, 2020, the Commission issued an Opinion and Order, granting, in part and denying, in part, PAWC's Petition, and directing modification, if necessary, of the litigation schedule appearing in the ALJ's Prehearing Order issued on June 15, 2020.

Eight public input hearings were held over the course of August 18, 2020 and August 25 through 27, 2020.

On September 2, 2020, an Order was issued which modified the litigation schedule and rescheduled the evidentiary hearings for October 23, 26-29, 2020, starting at 9:30 a.m. each day.

On September 8, 2020, the OSBA submitted the direct testimony of Brian Kalcic.

On September 29, 2020, the OSBA submitted the rebuttal testimony of Brian Kalcic. On October 20, 2020, the OSBA submitted the surrebuttal testimony of Brian Kalcic.

The parties engaged in settlement discussions to try to achieve a resolution of some or all the issues in this case. On October 20, 2020, the parties jointly requested cancellation of the first day of the evidentiary hearings to facilitate settlement discussions. The ALJ granted the request to cancel the hearing and directed that the first day of evidentiary hearings would convene as a Second Prehearing Conference.

A Second Prehearing Conference was held on October 23, 2020. During the Second Prehearing Conference, a modified hearing schedule was decided, with the October 26, 2020 hearing date being cancelled but all remaining hearing dates continuing to be scheduled.

Evidentiary hearings were held before ALJ Johnson on October 27 and 28, 2020. At the October 27, 2020 hearing, the OSBA moved the testimony of its witness, Brian Kalcic, into the record.

On October 30, 2020, PAWC and CAUSE-PA filed a Joint Stipulation addressing the joint resolution of a few issues raised by CAUSE-PA in this proceeding.

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

The OSBA submitted its Main Brief on November 10, 2020. Main briefs were also filed by PAWC, the OCA, CAUSE-PA, and CEO.

The OSBA submits this Reply Brief pursuant to the procedural schedule set forth in this matter by Orders entered on June 15, 2020 and September 2, 2020.

## II. SUMMARY OF REPLY ARGUMENT

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. While PAWC suggests that it would be unreasonable to deny its request for rate increase, and that a denial of a rate increase would fail to achieve a balancing of the interests of customers and utility investors, the opposite is true. Denying a rate increase to PAWC at a time when the Company’s ratepayers are experiencing rampant joblessness and business closings will protect both customers and the Company. When customers cannot afford to pay their current bills, it makes no sense to place a further burden on ratepayers in the form of a rate increase. Doing so would only exacerbate business closings, eroding the customer base, and thereby undermine a utility’s reasonable opportunity to recover its prudently incurred costs in the future.



Furthermore, denying PAWC's request for a rate increase will not impact its ability to provide safe and reliable service for its customers. The OSBA believes that PAWC's requested rate increase should be denied while the COVID-19 pandemic is still ravishing Pennsylvania; however, PAWC remains free to seek a rate increase once the economic hardship caused by COVID-19 has subsided. In the event that the Commission determines that PAWC is entitled to a rate increase at this time, despite the COVID-19 emergency, the Commission should order PAWC to submit revised capital investment and expenditure budgets for the fully projected future test year ("FPFTY") periods that minimize the need for any rate increase at this time.

Finally, in this Reply Brief, the OSBA renews its unrebutted recommendation that Act 11 subsidies should be recovered from water customers on a revenue neutral basis by rate class and, should the ALJ and PUC adopt the OCA's recommended scale back, any scale back of such subsidies should be credited to water rate customers in the same revenue neutral fashion.

### III. REPLY ARGUMENT

#### A. Overall Position on Rate Increase

As noted in Mr. Kalcic's testimony and the OSBA's Main Brief, PAWC's request for a rate increase is "ill-timed."<sup>1</sup> PAWC initiated the current base rates case on April 29, 2020, knowing full-well that the COVID-19 pandemic was devastating Pennsylvania, both in terms of economy and public health.

In its Main Brief, PAWC noted that, in his testimony for PAWC, Mr. Cawley explained that rates should be set so that a utility has a reasonable opportunity to recover prudently incurred costs of providing essential utility service and earn a fair return on investment in used and useful

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<sup>1</sup> OSBA Statement No. 1, p. 3.

property.<sup>2</sup> Granting PAWC's request for a rate increase at this time would undermine the goals outlined by Mr. Cawley insofar as the utility will not have a reasonable opportunity to recover prudently incurred costs if its customers are suffering from economic hardship and unable to pay their utility bills. As noted in Mr. Kalcic's direct testimony, the US unemployment rate was 8.4% as of August, 2020;<sup>3</sup> the Pennsylvania unemployment rate was 13.7% as of July, 2020;<sup>4</sup> 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;<sup>5</sup> 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.<sup>6</sup> With small businesses losing revenues due to COVID-19, it is difficult to see how the utility has the reasonable opportunity to collect rates currently in effect, let alone if the rates would be increased. In some cases, the revenue loss suffered by small business customers has been so extreme that the businesses have permanently closed, and with the statistics cited by Mr. Kalcic, there are fewer small businesses emerging to replace those that have closed.

The fact that customers are struggling financially during the COVID-19 pandemic has been recognized by the Commission. In its October 13, 2020 Order issued at docket M-2020-3019244 the PUC noted that "Pennsylvania's COVID-19 daily diagnosis statistics remain high, and many businesses are not operating at full capacity which means that our economy is still exhibiting a downturn."<sup>7</sup> PAWC chose to file for a rate increase during a global pandemic and at a time when the economic suffering of its customers is well-known. It is unreasonable to grant a

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<sup>2</sup> Main Brief of Pennsylvania-American Water Company ("PAWC M.B."), p. 8.

<sup>3</sup> <https://fred.stlouisfed.org/series/UNRATE>

<sup>4</sup> <https://www.bls.gov/regions/mid-atlantic/pennsylvania.htm#eag>

<sup>5</sup> <https://tracktherecovery.org>; reviewed by Mr. Kalcic on September 4, 2020.

<sup>6</sup> <https://tracktherecovery.org>; reviewed September 4, 2020.

<sup>7</sup> October 13, 2020 Order, at docket M-2020-3019244, p. 2.

rate increase at this time and doing so will harm not only customers, but may also deprive the Company of its opportunity to recover costs in the future.

PAWC additionally argued that failing to grant its requested rate increase would deprive the Company of its timely return on investments and would harm customers by undermining the financial stability of utilities and their abilities to provide safe and reliable service.<sup>8</sup> This argument is particularly disturbing and troublesome to the OSBA. It is apparent that the OSBA, OCA, and other parties opposing PAWC's rate increase are doing so due to the timing of PAWC's request. PAWC is free to renew its request for a rate increase after the economic crisis caused by COVID-19 passes, or at the very least slows down. PAWC last received a rate increase in 2018.<sup>9</sup> However, PAWC seems to suggest that if it is not granted a rate increase in 2020, it may not be able to provide safe and reliable service. There is no evidence in the record to suggest that if a rate increase is not granted, that PAWC will no longer be able to serve its customers in a safe or reliable manner. The OSBA fully expects that if a rate increase is denied, PAWC will continue to meet its obligations to furnish adequate, efficient, safe, reliable, and reasonable service as required by Section 1501 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1501.

In its Main Brief, the OSBA expressed its doubt that PAWC's filed capital investment and expenditure budgets for the FPFTY periods were necessary or prudent at this time.<sup>10</sup> Again, when numerous customers continue to experience economic and financial hardship, with no end in sight, PAWC should only seek to undertake capital expenditures that are absolutely necessary at this time, in light of the COVID-19 crisis. If the ALJ and PUC do grant a rate increase to

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<sup>8</sup> PAWC M.B., p. 8.

<sup>9</sup> Order entered December 7, 2017, at docket R-2017-259583.

<sup>10</sup> Main Brief of the Office of Small Business Advocate ("OSBA M.B."), pp. 9-10.

PAWC, the OSBA requests that PAWC be directed to adjust its planned capital expenditures and reduce its requested Year 1 and Year 2 water and wastewater revenue requirements in response to the COVID-19 pandemic.<sup>11</sup>

#### **B. OCA's Scale Back Proposal**

In its Main Brief, the OCA argued that the ALJ and PUC should adopt the recommended scale back proposal set forth in Mr. Rubin's testimony.<sup>12</sup> Mr. Rubin "recommended that the reduction in the revenue requirement first reduce the water Zone 1 subsidy in proportion to the subsidy paid by each customer class under PAWC's proposal for Rate Year 1."<sup>13</sup> While the OSBA does not oppose the OCA's recommended scale back, the OSBA argued that, unlike PAWC's proposal, Act 11 subsidies should be recovered from water customers on a revenue neutral basis, by rate class, and recommended that any scale back of such subsidies should be credited to water rate customers in the same revenue neutral fashion.<sup>14</sup> No party rebutted the OSBA's recommended allocation; therefore, if the ALJ and the Commission adopt the OCA's recommended scale back, such monies should be credited in the manner recommended by the OSBA.

#### **IV. CONCLUSION**

In view of the foregoing, as well as the arguments set forth in the OSBA's Main Brief, the OSBA respectfully requests that the ALJs and Commission:

1. Deny PAWC's request for a rate increase; or, in the alternative,
2. Direct PAWC to submit revised capital investment and expenditure budgets for

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<sup>11</sup> *Id.*

<sup>12</sup> Abridged Main Brief of the Office of Consumer Advocate ("OCA M.B."), pp. 66-67.

<sup>13</sup> *Id.*

<sup>14</sup> OSBA Statement 1-R, p. 3.

the FPPTY periods that minimize the need for any rate increase at the present time,

3. Adopt PAWC's Year 1 and Year 2 class revenue allocation proposals for water service, exclusive of PAWC's proposed allocation of its unrecovered wastewater and Steelton revenue requirements to water customers,
4. Reject PAWC's proposed allocation of its unrecovered wastewater and Steelton revenue requirements to water customers in Year 1 and Year 2,
5. Adopt the OSBA's recommended allocation of unrecovered wastewater and Steelton revenue requirements to water customers in Year 1 and Year 2, in the amounts of \$32.3 million and \$30.4 million, respectively,
6. Adopt the OSBA's recommended scale back methodology,
7. Reject PAWC's proposed RCS, and
8. Reject PAWC's proposed pension and OPEB tracker.

Respectfully submitted,

/s/ Erin K. Fure

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Dated: November 20, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**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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