

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 20, 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 Comments in Opposition to the Joint Petition for Non-Unanimous Settlement in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman  
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cc: The Honorable Conrad A. Johnson (**email only**)  
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Certificate of Service

\*299849

## 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 document, the Office of Consumer Advocate's Comments in Opposition to the Joint Petition for Non-Uniform Settlement, 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 20<sup>th</sup> day of November 2020.

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Dated: November 20, 2020  
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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

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COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE  
IN OPPOSITION TO  
THE JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT

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I. INTRODUCTION

On October 30, 2020 Pennsylvania American Water Company (PAWC) filed a Joint Petition for Non-Unanimous Settlement of Rate Investigation (Joint Petition or Non-Unanimous Settlement) that was executed by PAWC, the Bureau of Investigation and Enforcement (I&E), and the Pennsylvania-American Water Large Users Group (PAWLUG) (collectively Joint Petitioners).

Pursuant to ALJ Johnson's November 5, 2020 Interim Order<sup>1</sup> and 52 Pa. Code § 5.232(g), the Pennsylvania Office of Consumer Advocate (OCA) hereby respectfully requests that Pennsylvania Public Utility Commission (Commission) deny the Non-Unanimous Settlement. While many of the provisions resolve issues in a manner consistent with the OCA's position in this case, the level of the rate increase, the excessive subsidy by water customers of wastewater revenue requirement, the disparate rate impacts, and the lack of a required filing of a stormwater rate are fatal flaws that render the Non-Unanimous Settlement in its current form not in the public

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<sup>1</sup> Third Interim Order Addressing Filing of Comments or Objections to Non-Unanimous Settlement (Order entered Nov. 5, 2020).

interest. The OCA respectfully requests that the Commission carefully consider the arguments contained herein as well as in the OCA's Main Brief and Reply Brief and reach a determination based on the evidence of record in this proceeding. As such, the OCA states in opposition as follows:

A. Legal Standards

While it is the Commission's policy to encourage settlements between the parties, 52 Pa. Code § 5.231, the terms and conditions of any settlement must nevertheless be in the public interest.<sup>2</sup> In the event of a non-unanimous settlement, the Commission's standards for review are the same as those for deciding a fully contested case.<sup>3</sup> Denying PAWC's requested rate increase due to the current societal and economic conditions rather than accepting the Non-Unanimous Settlement would be an appropriate and valid exercise of the Commission's authority in this proceeding.

B. Overview

The Non-Unanimous Settlement provides for increases in water and wastewater rates in a series of steps. Joint Petition at ¶ 25. Under the proposed "Step 1 Rate Increase", the Company will increase rates by \$50.5 million on the effective date of the settlement. Joint Petition at ¶ 25. Next, under the proposed "Step 2 Rate Increase", the Company will increase rates by an additional \$20 million, effective January 1, 2022. The Non-Unanimous Settlement also applies a temporary credit of \$10.5 million to the Step 1 and Step 2 rate increases, which represents a flow-back of the "Catch-Up" portion of the excess accumulated deferred income tax (EADIT), which was accumulated during the period of January 1, 2018 through December 31, 2020. Joint Petition at ¶

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<sup>2</sup> Pa. PUC. v. York Water Co., Docket No. R-00049165 (Order entered Oct. 4, 2004).

<sup>3</sup> Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp., Docket Nos. A-2010-2176520, and A-2010-2176732 (Opinion and Order entered March 8, 2011).

26. From January 28, 2023 forward, the “Catch-Up” EADIT balance is extinguished and the rate credit no longer applies, effectively increasing the amount that the customers will be responsible to pay the utility upon receiving their utility bill for a third time as a result of the Non-Unanimous Settlement. See Joint Petition at Appendix D.

The Non-Unanimous Settlement included the following summary of the proposed settlement revenue increase:

<u>January 28, 2021 through December 31, 2021 (“Step 1”):*</u>	<u>January 1, 2022 through January 27, 2023 (“Step 2”):**</u>	<u>January 28, 2023 and forward:</u>
Step 1 Base Rate Increase: \$50.5 M Step 1 Annualized Credit: <u>\$(10.5) M</u> Step 1 Net Increase: \$40.0 M	Step 1 Base Rate Increase: \$ 50.5 M Step 2 Base Rate Increase: \$ 20.0 M Step 2 Annualized Credit: <u>\$(10.5) M</u> Step 2 Net Increase: \$60.0 M	Total Base Rate Increase: \$70.5 M Credit: <u>\$ (0)</u> Net Increase: \$70.5 M

\* The figures for Step 1 are annualized (i.e., they reflect the base rate revenue increase, credit and net increase for a full twelve-month period ending December 31, 2021. However, because the end of the suspension period and effective date for rates established in this case is January 28, 2021, the base rate revenue increase and credit and, therefore, the net increase the Company will realize in 2021 (Step 1), will be only approximately 92% [(365-28)/365] of the annualized amounts shown in the table above. As shown above, the credit will expire by January 28, 2023.

\*\* The base rate increases, credit and net increase are annualized (i.e., stated on the basis of a twelve-month period).

Joint Stipulation at App. D. The OCA does not oppose the Catch-Up EADIT credit being returned to the Company’s ratepayers over a two-year period. The OCA notes, however, that the application of the credit to the revenue requirement proposed in the Non-Unanimous Settlement masks the magnitude of the rate increase.

The OCA’s Comments in Opposition will address the Settlement provisions covering the proposed \$70.5 million revenue requirement, the proposed 20-year amortization of the unprotected EADIT, the proposed \$29 million wastewater subsidy, the lack of a commitment for a stormwater

rate proposal in the next proceeding, the disparate rate impact, and the proposed tariff language that includes PAWC's limitation of liability language.

## II. COMMENTS

### A. Revenue Requirement (§§ 23-26, 30)

The OCA submits PAWC could continue operations, recover all of its expenses, and earn a profit with no revenue increase. While the Company would perhaps not generate as much profit as the Company would like, the Company would still be earning a reasonable rate of return. The OCA submits that the overall rate of return of 7.70% for water and 2.84% for wastewater without any change in rates is more than adequate in this time of a pandemic. See OCA App. A.1, Table I Total Water and Table I Total Wastewater. The OCA's Main Brief and Reply Brief contain a full discussion of this issue. See OCA M.B. at 4-59; OCA R.B. at 2-20.

Permitting the Company to increase its base rates by \$70.5 million through multiple steps is not supported by the evidence of record in this case. In these extraordinary times, maintaining current rates is a reasonable—and temporary—outcome until fewer customers are suffering financially and the future is more ascertainable for ratemaking. The OCA submits that the Commission should not rely on PAWC's FPFTY projections and related assumptions, which were developed before the pandemic emerged, to consider a rate increase. Even assuming some of PAWC's FPFTY projections are accurate, OCA Witness Ralph Smith concluded that PAWC had an overall sufficiency for the Company's Water Systems of \$70,273,184 excluding Steelton and a revenue deficiency of \$1,940,190 for the Steelton Water System, and a revenue deficiency of \$30,906,901 for Wastewater under traditional ratemaking. See OCA St. 2SR at 5-6; OCA Exh. LA-6, Sch. A. In other words, PAWC's water rates should be reduced, and a modest increase in wastewater rates is all that could be supported in a business as usual case. Even the Step 1 increase

of \$50.5 million (7.06%)<sup>4</sup> in January 2021 is not supported and would still constitute a sizeable increase in rates while PAWC's customers continue to deal with the pandemic and its economic impact.

OCA witness Rothschild, using a Discounted Cash Flow (DCF) analysis and a Capital Asset Pricing Model (CAPM) as a check, demonstrated that under a business as usual approach for PAWC's water operations, the market-derived cost of common equity is 8.00%, and the overall rate of return is 6.30%, based upon a capital structure of 48.30% debt and 51.64% common equity. OCA St. 3 at 2-7, 31-58; OCA Schs. ALR-1, ALR-3. For PAWC's wastewater operations, a market-derived cost of common equity is 8.05%, and the overall rate of return is 6.08%, based upon a capital structure of 39.44% debt and 50.37% common equity. Id. If the OCA's recommendation that no increase be approved as a result of the ongoing COVID-19 pandemic and the related economic impact on PAWC's customers is adopted, the resulting overall rates of return of 7.70% for water (with a capital structure of 51.64% cost of common equity and 48.3% cost of debt), and 2.84% for wastewater (with a capital structure of 50.37% cost of common equity and 39.44% cost of debt) represent a fair rate of return that balances the interests of consumers and shareholders and would be in the public interest. See OCA App. A.1, Table I(A). As such, there is record evidence showing that it is not necessary to increase rates in order for PAWC to earn a fair rate of return.

Simply put, in the near term, PAWC's rates are adequate at this time. If PAWC is concerned about operating revenues during this uncertain time and moving forward, PAWC could defer new construction projects that are not necessary to ensure the current provision of safe and reliable service to existing customers. After the COVID-19 pandemic has passed, PAWC can file

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<sup>4</sup> Joint Petition at App. C.



again for rate increases when the Company's financial projections will be founded on more stable, and thus predictable, economic conditions. There is no need for the rate increase contained in the Non-Unanimous Settlement, particularly given the economic hardships and uncertainties accompanying the COVID-19 pandemic as well as the uncertainties surrounding the FPPTY projections. See OCA St. 1 at 22-24.

Under the Non-Unanimous Settlement, unprotected EADIT will be amortized over a 20-year period. Joint Petition at ¶ 30. While a 20-year amortization period is preferable to the approximately 40-year amortization period under ARAM originally proposed by the Company, it is still unreasonable because PAWC will retain the ratepayer-supplied capital for an excessive period of time, particularly compared to the three-year period the Company collected it over. Further, while PAWC is retaining those funds for a longer period of time, the revenue requirement and, ultimately, customer rates are higher than they would otherwise be.<sup>5</sup>

Additionally, the 20-year amortization is still unreasonable as it does not come close to matching the return of the unprotected EADIT to the ratepayers who paid the monies that contributed to the EADIT at issue. The OCA submits that, from both a traditional ratemaking approach and the realities of the current economic and public health situation due to the pandemic support returning customer-supplied capital to the customers who supplied the capital in a reasonable, shorter time period than 20 years is warranted. As noted in the OCA's Main Brief and Reply Brief, PAWC utilizes a three-year amortization for other impacts of the TCJA that also are not subject to IRS normalization requirements. OCA M.B. at 33; OCA R.B. at 13; OCA St. 2 at 106. The OCA's position that the Commission adopt a three-year amortization period for PAWC's

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<sup>5</sup> See, e.g., OCA Cross Exam. Exhs. 1, 2.

unprotected EADIT is unchanged by the proposed 20-year amortization period for unprotected EADIT contained in the Non-Unanimous Settlement.

The issue of the appropriate amortization period for ratemaking purposes of unprotected EADIT has been dealt with for American Water subsidiaries in other jurisdictions.<sup>6</sup> For example, the California Public Utility Commission determined that a two-year amortization period for unprotected EADIT was reasonable for PAWC's affiliate, California American Water Company. The California Public Utility Commission determined that returning unprotected EADIT to the ratepayers over a two year period was reasonable, given that the unprotected ADIT belongs to ratepayers and should be returned to ratepayers in the earliest manner possible. Application of California-American Water Co., 2018 Cal. PUC LEXIS 628, \*194-97 (Dec. 20, 2018).

Increasing rates in the manner set forth in the Non-Unanimous Settlement does not mitigate the OCA's concerns. The OCA therefore submits that the Commission should not accept PAWC's projections and not adopt the Non-Unanimous Settlement revenue requirement increase.

B. Cost of Service Studies in Future Rate Filings (§ 28)

PAWC agrees to submit one or more separate stormwater and wastewater cost of service studies (COSS) for each of its combined sewer systems (CSS) and is not required to submit a separate study for each combined stormwater system. This provision leaves the determination, of the number of COSS, completely with PAWC, with the result to be revealed when it files its next

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<sup>6</sup> Application of California-American Water Co., 2018 Cal. PUC LEXIS 628, \*194-97 (Dec. 20, 2018); 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) (denying Tennessee American Water's proposal to use ARAM after considering Mr. Wilde's testimony and instead applied a three-year amortization period for unprotected EADIT); Proceeding on Motion of the Commission on Changes in Law that May Affect Rates, 2018 N.Y. PUC LEXIS 393, \*82-84 (Aug. 9, 2018) (directed New York American Water Co. 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, 2020 N.J. PUC LEXIS 414, \*7 (Oct. 28, 2020) (approving a fifteen-year amortization period instead of New Jersey American Water's ARAM initial claim for unprotected EADIT).

case. The OCA submits that this provision will prevent the parties and the Commission from adequately reviewing the allocation of costs for the CSS systems because it will further commingle the stormwater costs that should not continue to be allocated as infiltration and inflow. The stormwater costs should be addressed in a separate cost of service study to support a proposed stormwater rate, as discussed *infra*.

C. Cost Allocation and Rate Design (§§ 70-71)

As will be discussed below, the OCA submits that the proposed rate design, distribution of the increase, and wastewater subsidy agreed to in the Non-Unanimous Settlement is not supported by the record, is not reasonable, and is not consistent with applicable statutory requirements. Thus, even if the proposed revenue requirement is found to be supported and reasonable, which, as discussed *supra*, it should not be, the proposed rate design and wastewater subsidy should not be approved.

1. Water Customer Charges and Consumption Charges (§ 70 a-c)

The Non-Unanimous Settlement describes the consolidation of rate zones and the customer charges that are set forth in more detail in Appendix A (water tariff), Appendix C (water proof of revenues, excluding Steelton and water proof of revenues, Steelton), and Appendix G (bill comparisons). The Non-Unanimous Settlement and Appendices do not provide any explanation of how the customer charges or consumption charges were determined.<sup>7</sup> The bill comparison (Appendix G) shows the average customer's present rates and the proposed Settlement's impact on an average customer but it does not include the proposed rates for the average customer. Based on the information provided in the Settlement and Appendices, it is not possible to determine the

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<sup>7</sup> The proof of revenues comparisons do not have references tying the information back to PAWC's exhibits in this proceeding.

basis for these disparate changes or to determine whether the impact, from a rate design perspective, results in just and reasonable rates.<sup>8</sup>

In its Statement in Support, PAWC states that the allocations contained in the Non-Uniform Settlement provide “for reasonable movement toward the system average rate of return by the various classes as measured by the Company’s cost of service study.” Statement A at 31. The Non-Uniform Settlement and the Appendices provide no evidence to support that statement. Moreover, the Appendices to the Settlement fail to provide any schedules that show how the Non-Uniform Settlement allocations provide for “reasonable movement” (or any movement) toward the system average rate of return.

2. Wastewater Customer Charges and Consumption Charges (§ 71 a-c)

The Non-Uniform Settlement describes the consolidation of rate zones and the customer charges that are set forth in more detail in Appendix B (wastewater tariff), Appendix C (wastewater proof of revenues), and Appendix H (bill comparisons).

The bill comparison (Appendix H) shows the average customer’s present rates and the proposed Settlement’s impact on an average customer but it does not include the proposed rates for the average customer. Based on the information provided in the Settlement and Appendices, it is not possible to determine the basis for these disparate changes or to determine whether the impact, from a rate design perspective, results in just and reasonable rates.<sup>9</sup>

In its Statement in Support PAWC states that the allocations contained in the Non-Uniform Settlement provide “for reasonable movement toward the system average rate of return by the various classes as measured by the Company’s cost of service study.” Statement A at 31.

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<sup>8</sup> As discussed above, the OCA does not agree with the overall water revenue requirement reflected in the Non-Uniform Settlement.

<sup>9</sup> As discussed above, the OCA does not agree with the overall wastewater revenue requirement reflected in the Non-Uniform Settlement.

The Non-Unanimous Settlement and the Appendices provide no evidence to support that statement. Moreover, the Appendices to the Non-Unanimous Settlement fail to provide any schedules that show how the Non-Unanimous Settlement allocations provide for “reasonable movement” (or any movement) toward the system average rate of return.

### 3. Combined Water and Wastewater Revenue Requirement (§ 71.d)

The Non-Unanimous Settlement provides for \$29,296,281 (Step 1) and \$21,480,685 (Step 2) of wastewater revenues to be shifted to water customers pursuant to Section 1311(c). Neither the Settlement nor the Statements in Support provide any explanation of how that level of subsidy meets the public interest requirements of Section 1311(c). 66 Pa. C.S. § 1311(c). The evidence in the proceeding does not support this level of subsidy. Originally, PAWC proposed that its water Rate Zone 1 customers pay a subsidy of \$34,628,397 in Rate Year 1,<sup>10</sup> as set forth below:

Table 2: PAWC Proposed Subsidies from Rate Zone 1 Water Customers			
Rate Area	Revenue Requirement	PAWC Proposed Revenues	Subsidy
Steeltown water	\$ 5,189,852	\$ 3,413,023	\$ (1,776,829)
Wastewater excl. Sadsbury & Exeter	33,213,134	30,785,011	(2,428,123)
Exeter WW	15,130,505	11,071,133	(4,059,372)
Sadsbury WW	1,838,386	959,853	(878,533)
Scranton WW	34,754,312	26,297,265	(8,457,047)
McKeesport WW	30,047,582	14,503,073	(15,544,509)
Kane WW	3,287,466	1,803,482	(1,483,984)
Total	\$123,461,237	\$88,832,840	\$ (34,628,397)

OCA St. 1 at 53 (footnotes omitted). The originally proposed subsidy is equivalent to 41% of PAWC’s originally proposed FPFTY Rate Zone 1 increase of \$79.25 million. OCA St. 1 at 53. The originally proposed subsidy is equivalent to 41% of PAWC’s originally proposed FPFTY Rate

<sup>10</sup> PAWC’s original filing included a proposed subsidy in Rate Year 2 of \$35 million, or 4.7% of the total proposed revenue for water Zone 1. PAWC St. No. 1 a 30.

Zone 1 increase of \$79.25 million. OCA St. 1 at 53. Under the Non-Unanimous Settlement, the Step 1 subsidy of \$29.3 million (§ 71.d) is equal to approximately 76% of the \$38.7 million rate increase allocated to water Rate Zone 1 customers. Non-Unanimous Settlement Appendix C, Sch. 3 - Step 1. In 2022, the subsidy would decline to \$21.5 million (§ 71.d), representing approximately 45% of the combined Step 1 and Step 2 rate increase allocated to water Rate Zone 1 of \$47.7 million. Non-Unanimous Settlement Appendix C, Sch. 3 - Step 2.

Section 1311(c) allows, but does not require, the Commission to allocate a portion of the wastewater revenue requirement to a combined water and wastewater customer base if it is in the public interest. 66 Pa. C.S. § 1311(c). Section 1311(c) was enacted as part of Act 11 of 2012 and has been used by PAWC in its rate cases filed in 2013 and 2017 to propose a shift of wastewater revenue requirement to water Zone 1 customers. However, the issue of how the Commission should consider proposals made pursuant to Section 1311(c) has not been litigated because both of PAWC's cases were resolved by settlement.<sup>11</sup> In the 2013 and 2017 rate cases, as well as in this case, Mr. Rubin has provided criteria that can be used to evaluate the proposed Section 1311(c) subsidies. See OCA M.B. at 67-76. This is the first case to include acquisitions filed under Section 1329 of the Public Utility Code. Using Section 1311(c) to shift most of the costs of the Section 1329 acquisitions to its statewide water customers is not reasonable. For a complete discussion see OCA M.B. at 67-76; OCA R.B. at 21-23; OCA St. 1 at 52-69.

#### 4. Stormwater Rates (§ 71.e)

The Company agrees to propose “potential recovery and rate methodology options for stormwater costs of combined sewer systems in its next general wastewater or combined

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<sup>11</sup> Pa. P.U.C. v. Pennsylvania-American Water Co., Docket No. R-2013-2355276, Order (Dec. 19, 2013) available at <https://www.puc.pa.gov/pdocs/1262225.docx> (last visited on Nov. 20, 2020); Pa. P.U.C. v. Pennsylvania-American Water Co., 2017 Pa. PUC LEXIS 249 (Dec. 7, 2017).

water/wastewater base rate filing.” Non-Unanimous Settlement, ¶ 71.e. The provision explains that the proposals will include “an analysis of the recovery of such stormwater costs through various methodologies including forms of separate stormwater rates, and a description of the customers to whom the rates would apply.” This provision, although calling for a consideration of methodology options, does not appear to require the Company to propose stormwater rates in its next base rate proceeding. The continued collection of stormwater costs from wastewater and water customers is not reasonable. This Non-Unanimous Settlement provision appears to perpetuate the collection of the stormwater costs through wastewater and water rates beyond the next rate case to the one beyond that at least.<sup>12</sup> Permitting PAWC to continue the inequitable collection of stormwater costs from wastewater and water customers, without a clear direction that PAWC shall propose stormwater rates, along with providing the requisite notice, in its next rate filing should be rejected.<sup>13</sup>

The separation of costs between sanitary sewer and stormwater is key to ensuring that the costs are accurately assigned. If the costs are not assigned, it requires sanitary sewer customers and water customers (because wastewater costs are shifted to water customers) to pay costs that are not related to wastewater or water service. For a full discussion of the differences between stormwater and sanitary sewer services, including widely recognized way to charge for stormwater service, see OCA M.B. at 76-83; OCA R.B. at 24; OCA St. 1 at 36-50; OCA St. 1SR at 9-13.

D. Limitation of liability provisions (¶ 72)

The Non-Unanimous Settlement includes an agreement that the limitation of liability provisions proposed by PAWC are included in proposed tariffs (Appendices A - Water and B -

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<sup>12</sup> For example, if PAWC files every three years, it will be six years before they might propose a stormwater rate and nine months after filing that case that stormwater rates might go into effect. There is nothing in Paragraph 71.e that would require any stormwater rate to be proposed.

<sup>13</sup> See, e.g., Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Cmwlth. 2004).

wastewater). This provision is not in the public interest and is not supported by the record in the proceeding.

The OCA opposes the proposed limitation of liability provisions as proposed by PAWC because they are overly broad and contrary to the Commission's Policy Statement and (1) would limit liability for negligent actions for injury or damages that are not related to interruption or cessation of service, (2) would limit liability for injury or damage resulting from intentional actions (i.e. reckless or intentional behavior) and (3) contain so many conditions that it would effectively exculpates PAWC from liability.<sup>14</sup> See OCA M.B. at 109-11; OCA R.B. at 36-38; OCA St. 5 at 21-22; OCA St. 5SR at 18-19.

E. Joint Petition Prayer for Relief (Page 25)

The conclusion of the Joint Petition contains the following prayer for relief:

That the Commission deem the complaints filed by parties that are Joint Petitioners to be satisfied by the approval of the Settlement and dismiss with prejudice all outstanding complaints filed by parties that are not Joint Petitioners.

Joint Petition at 25. The OCA submits that, as a non-signatory to the Joint Petition, a dismissal with prejudice of the complaints filed by the parties that chose not to join the Non-Unanimous Settlement is unreasonable and inappropriate. The Company has provided no legal support, or legal argument, that the complaints of the non-settling parties should be dismissed with prejudice if the Settlement is adopted despite the opposition of multiple parties to the Non-Unanimous Settlement in this proceeding. As such, the OCA respectfully requests that the Company's prayer

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<sup>14</sup> A tariff may limit a utility's liability for interruption or cessation of service due to negligence but only in narrowly-defined circumstances. See 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); DeFrancesco v. West Penn Water Co., 329 Pa. Super. Ct. 508, 478 A.2d 1295 (1984); 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); OCA St. 5 at 22-23.



for relief that all non-settling complaints be dismissed with prejudice upon approval of the Settlement, should the Non-Unanimous Settlement be adopted, be denied by the Commission.

### III. CONCLUSION

The OCA submits that the Non-Unanimous Settlement should not be approved. The OCA submits that the record does not support the specific revenue-requirement components. In addition, the Non-Unanimous Settlement provides for a much larger subsidy of wastewater revenue requirement than is supported by the record in this proceeding. As set forth in the OCA's Main and Reply Briefs, the Commission should not approve any increase in rates at this time for PAWC.

Respectfully submitted,

/s/Christine Maloni Hoover

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