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November 20, 2020

VIA eFILING

Rosemary Chiavetta, Secretary
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Commonwealth Keystone Building
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**Re: Pennsylvania Public Utility Commission v.
Pennsylvania-American Water Company
Docket Nos. R-2020-3019369 and R-2020-3019371**

Dear Secretary Chiavetta:

Enclosed for filing is the **Reply Brief of Respondent Pennsylvania-American Water Company** (the "Reply Brief") in the above-referenced matters. As evidenced by the enclosed Certificate of Service, copies of the Reply Brief have been served on Administrative Law Judge Conrad A. Johnson and all parties of record.

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

Sincerely,



Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	Docket No. R-2020-3019369
	:	Docket No. R-2020-3019371
	:	
v.	:	
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply Brief of Respondent Pennsylvania-American Water Company** in the above-referenced proceedings on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

**Docket Nos. R-2020-3019369
R-2020-3019371**

**REPLY BRIEF OF RESPONDENT
PENNSYLVANIA-AMERICAN WATER COMPANY**

**Before Administrative Law Judge
Conrad A. Johnson**

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS

Page

I.	INTRODUCTION	1
II.	SUMMARY OF ARGUMENT	1
III.	OVERALL POSITION ON RATE INCREASE.....	7
IV.	PAWC’S PROPOSED MULTI-YEAR RATE PLAN	19
V.	RATE BASE.....	22
	A. Utility Plant In Service.....	22
	B. Average Versus Year-End Rate Base	22
	C. Deduction From Rate Base Of EADIT	24
	D. Cash Working Capital	24
VI.	REVENUES.....	25
VII.	OPERATING AND MAINTENANCE EXPENSES	26
	A. Payroll Costs – Prorating Wage And Salary Increases	26
	B. Performance Based Compensation (PAWC and Service Company).....	26
	C. Capitalization Rate.....	29
	D. Annual Depreciation	29
VIII.	TAXES.....	30
	A. Taxes Other Than Income Taxes	30
	B. Income Taxes – Excess ADIT	30
IX.	RATE OF RETURN	36
	A. Capital Structure	37
	B. Cost Of Long-Term Debt.....	39
	C. Common Equity Cost Rate	39
	D. Business Risks And Management Performance	49
	E. Other Parties’ Equity Cost Rate Recommendations And Principal Areas Of Dispute.....	50
X.	REGIONALIZATION AND CONSOLIDATION SURCHARGE	50
XI.	PENSION/OPEB TRACKER.....	53

TABLE OF CONTENTS

(continued)

	Page
XII. RATE STRUCTURE AND RATE DESIGN	53
A. Introduction.....	53
B. Cost Of Service Study.....	54
C. Non-Settling Party Rate Design Proposals	54
D. Allocation Of Wastewater Revenue Requirement To Water Operations	58
E. Allocation Of Steelton Revenue Requirement To Other Water Operations.....	58
F. Separate Stormwater Rate.....	59
XIII. RECOMMENDATIONS FOR ACTIONS RELATED TO THE COVID-19 EMERGENCY.....	59
XIV. LOW-INCOME CUSTOMER ASSISTANCE	61
A. H2O Discount Program Design	61
B. Hardship Fund.....	63
C. Low-Income Customer Outreach, Data Collection And Reporting.....	63
D. Comprehensive Universal Service Plan.....	64
E. Winter Shut-Off Moratorium.....	64
XV. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES.....	65
A. Customer Performance Service Standards.....	65
B. Call Centers.....	66
C. Customer Complaints.....	67
D. Customer Satisfaction Surveys	68
E. Training On Termination Of Service.....	68
F. Pressure Surveys And Pressures	69
G. Main Extensions.....	69
H. Sewage Backups	70
I. Tenant Issues And Protections.....	70
J. Language Access	70
K. Protection For Victims Of Domestic Violence.....	70
XVI. TARIFF CHANGES	70
A. Limitation Of Liability.....	70
B. Chapter 56 Customer Protections To Be Included In Tariff.....	72

TABLE OF CONTENTS
(continued)

	Page
C. Align Tariff Language On Low-Income Customers With Actual Practice	72
XVII. CONCLUSION.....	73

LIST OF APPENDICES

Appendix A.....	Comprehensive List of Outstanding Issues
-----------------	------------------------------------------

TABLE OF AUTHORITIES

	Page(s)
 Court Cases	
<i>Donham v. Pub. Serv. Comm’n</i> , 232 Mass. 309, 122 N.E. 397 (1919)	15
<i>Duquesne Light Co. v. Barasch</i> , 488 U.S. 299 (1989)	11
<i>McCloskey v. Pa. P.U.C.</i> , 225 A.3d 192 (Pa. Cmwlth. 2020)	5, 22
<i>Popowsky v. Pa. P.U.C.</i> , 13 A.3d 583 (Pa. Cmwlth. 2011)	52
<i>Rabutino v. Freedom State Realty Co., Inc.</i> , 2002 Pa. Super. 318, 809 A.2d 933 (2002)	71
<i>Riverton Consol. Water Co. v Pa. P.U.C.</i> , 140 A.2d 114 (Pa. Super. 1958)	37, 39
 Commission Cases	
<i>Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Pub. Util. Code for its Acquisition of the Wastewater Sys. Assets of Limerick Twp.</i> , Docket No. A-2017-2605434 (Order entered Nov. 19, 2017)	49
<i>Application of California-American Water Co.</i> , 2018 Cal. PUC LEXIS 628 (Dec. 20, 2018)	32
<i>Implementation of Act 11 of 2012</i> , Docket No. M-2012-2293611 (Supplemental Implementation Order entered Sept. 21, 2016)	23
<i>Implementation of Act 58 of 2018 Alternative Ratemaking for Utils.</i> Docket No. M-2018-3003269 (Order entered Apr. 25, 2019)	48
<i>Implementation of Act 129 of 2008 Organization of Bureaus and Offices</i> , Docket No. M-2008-2071852 (Final Order entered Aug. 11, 2011)	2
<i>In the Matter of Electronic Application of Kentucky-American Water Co. for an Adjustment of Rates</i> , Case No. 2018-00358, slip op. (Ky. PSC June 27, 2019)	34

<i>In the Matter of the Indiana Util. Regulatory Comm’n Investigation into the Impacts of the Tax Cuts and Jobs Act of 2017 and Possible Rate Implications under Phase 1 and Phase 2 for Indiana American Water Co.,</i> Cause No. 45032 S4 (Ind. URC June 24, 2020)	34
<i>Pa. P.U.C. v. Aqua Pennsylvania, Inc.,</i> Docket No. R-00072711 (Order entered July 31, 2008)	27
<i>Pa. P.U.C. v. City of Lancaster-Bureau of Water</i> Docket No. R-2010-2179103 (Opinion and Order entered June 30, 2011)	42
<i>Pa. P.U.C. v. Duquesne Light Co.,</i> Docket No. R-2018-3000124 et al. (Opinion and Order entered Dec. 20, 2018)	31, 32
<i>Pa. P.U.C. v. PPL Elec. Utils. Corp.,</i> Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012)	<i>passim</i>
<i>Pa. P.U.C. v. Pennsylvania Gas & Water Co.,</i> 61 Pa. PUC 409, 74 PUR4th 238 (1986)	65, 66
<i>Pa. P.U.C. v. Philadelphia Gas Works,</i> Docket No. R-2020-3017206 (Order entered Nov. 19, 2020)	3, 10
<i>Pa. P.U.C. v. PPL Gas Utils. Corp.,</i> Docket No. R-00061398 (Order entered Feb. 8, 2007).	27
<i>Pa. P.U.C. v. UGI Utils., Inc. – Elec. Div.,</i> Docket No. R-2017-2640058 (Opinion and Order entered Oct. 4, 2018)	<i>passim</i>
<i>Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.,</i> Docket No. R-2019-3015162 (Recommended Decision issued Aug. 29, 2020)	10
<i>Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.,</i> Docket No. R-2019-3015162 (Oct. 8, 2020)	3, 9
<i>Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.,</i> Docket No. R-2018-3006814 (Oct. 29, 2019)	3
<i>In the Matter of the Petition of New Jersey-American Water Co., with Calculation of Rates Under the Tax Cuts and Jobs Act of 2017,</i> Docket Nos. AX-18010001, WR18030233 (N.J. BPUC, Oct. 28, 2020)	32
<i>Proceeding on Motion of the Comm’n on Change in Law that May Affect Rates,</i> Case 17-M-0815, 2018 N.Y. PUC LEXIS 393 (Aug. 9, 2018)	33

<i>Pub. Util. Serv. Termination Moratorium – Modification of March 13th Emergency Order,</i> Docket No. M-2020-3019244 (Oct. 8, 2020)	10, 60
----------------------------------------------------------------------------------------------------------------------------------------------------	--------

<i>In Re Tennessee American Water Co.’s Response to the Comm’ns Investigation on the Impact of Federal Tax Reform on the Pub. Util. Revenue Requirements,</i> 2020 Tenn. PUC LEXIS 101 (Aug. 3, 2020).....	33
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

Statutes & Regulations

66 Pa.C.S. § 1307(a)	52
66 Pa.C.S. § 1329.....	<i>passim</i>
66 Pa.C.S. § 1330.....	21, 52
66 Pa.C.S. § 1501.....	66
52 Pa. Code § 5.231	2
52 Pa. Code § 56.100(a).....	65
52 Pa. Code § 56.251	65
52 Pa. Code § 69.401	2
52 Pa. Code § 69.721(a).....	50
52 Pa. Code § 69.3302(a)(10).....	20

Other Authorities

James H. Cawley & Norman J. Kennard, <i>A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission</i> (2018)	8
<i>Report on the Quarterly Earnings of Jurisdictional Utilities,</i> Docket No. M-2020-3021797 (Oct. 29, 2020)	5, 13, 37
U.S. Bureau of Economic Analysis, Gross Domestic Product, Third Quarter 2020 (Advance Estimate).....	11
U.S. Bureau of Labor Statistics, Economy at a Glance (PA)	10

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC” or the “Company”) files this Reply Brief in response to the Main Briefs of the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and the Commission on Economic Opportunity (“CEO”). In its initial filing, PAWC requested Pennsylvania Public Utility Commission (“Commission” or “PUC”) approval to implement alternative ratemaking mechanisms and an increase in total annual operating revenues over the two years of its proposed multi-year rate plan (“MYRP”) consisting of calendar years 2021 (“RY1”) and 2022 (“RY2”). Thereafter, PAWC, the Bureau of Investigation and Enforcement (“I&E”), and the Pennsylvania-American Large Users Group (“PAWLUG”) (collectively, the “Joint Petitioners”) entered into the Joint Petition for Non-Unanimous Settlement of Rate Investigation (“Joint Petition” or “Settlement”), filed on October 30, 2020. AK Steel Corporation (“AK Steel”) later joined and supported the Joint Petition. Accordingly, I&E, AK Steel and PAWLUG did not file Main Briefs.

The OCA, OSBA, CAUSE-PA and CEO are not joining the Settlement. To a very large extent, the issues raised in the non-settling parties’ Main Briefs have been fully addressed in the Company’s Main Brief, filed on November 10, 2020, and an extensive reanalysis of each subject is, therefore, unnecessary. However, as an aid to the Administrative Law Judge (the “ALJ”), this Reply Brief will revisit certain of the key areas of disagreement.

II. SUMMARY OF ARGUMENT

The Commission strongly encourages settlement of base rate cases because “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a

fully litigated proceeding.”¹ The Company concurs in that assessment, as evidenced by its successful record of achieving reasonable PUC-approved settlements in its last seven water and wastewater base rate proceedings dating back to 2007.

In light of the Commission’s Policy Statement on Settlements and the technical difficulties of fully litigating a rate proceeding under COVID-19 restrictions, PAWC made an especially concerted effort to reach a settlement in this case. The Company largely succeeded by achieving the Settlement with the Joint Petitioners, which include I&E – the independent prosecutorial bureau of the PUC charged with representing the public interest in utility rate proceedings pursuant to a statutory obligation to scrutinize all aspects of a utility’s request to increase rates.²

As evidenced by the terms of the Joint Petition and the separate Stipulations PAWC entered with CAUSE-PA and CEO,³ PAWC made significant compromises and concessions to try to reach a unanimous settlement in this case. In particular, the Settlement provides for a rate increase roughly half of that requested by the Company, which will be phased-in through three installments over two years, with substantial (\$10.5 million) bill credits in each year. For that reason, PAWC’s customers will experience an annualized net increase in 2021 of only \$40 million,⁴ and customers will not begin to receive bills reflecting that increase until mid-March 2021. In addition, PAWC agreed to eliminate its proposed RY2 increase in its entirety, withdraw its proposed Regionalization and Consolidation Surcharge (“RCS”) and pension/OPEB tracker mechanism, and accept many of the rate structure and rate design recommendations of the non-

¹ 52 Pa. Code § 69.401 (Policy Statement on Settlements). *See also* 52 Pa. Code § 5.231.

² *See Implementation of Act 129 of 2008 Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Order entered Aug. 11, 2011), p. 5 (“BI&E will serve as the prosecutory bureau for purposes of representing the public interest in ratemaking and service matters . . .”).

³ *See* the attached Appendix A, which outlines the issues that were resolved by PAWC’s agreement, in the Settlement and the CAUSE-PA and CEO Stipulations, to accept recommendations of other parties.

⁴ *See* PAWC Main Brief, p. 3 (hereafter abbreviated as “M.B.” for PAWC’s and other parties’ Main Briefs).

settling parties, as explained in Section XII, *infra*. Unanimity could not be achieved notwithstanding the considerable efforts of PAWC and the other Joint Petitioners to accommodate the non-settling parties.

Despite reaching Stipulations that provided CAUSE-PA and CEO the bulk of their requests for customer protections and COVID 19 relief, both parties continued to litigate to try to obtain everything they had originally asked for. Those parties, as well as the OCA and OSBA, also cling to their position that the Commission should peremptorily reject any request for a rate increase because of the economic effects of the COVID-19 emergency. That position violates legal and Constitutional standards, contravenes long-established ratemaking principles and lacks any semblance of fundamental fairness, as explained in Section III of the Company's Main Brief and Section III, below. The "no increase" position is also contradicted by the Commission's own actions, including, notably, its recent approval of a rate case settlement for UGI Utilities, Inc. – Gas Division ("UGI Gas"),⁵ which followed closely on a prior \$30 million distribution base rate increase the PUC approved for UGI Gas effective October 29, 2019.⁶ By contrast, PAWC's last base rate case was filed in April 2017. On November 19, 2020, the Commission also approved a \$35 million base rate increase (*i.e.*, approximately half of the requested amount) for Philadelphia Gas Works ("PGW") following a non-unanimous settlement.⁷ Of particular note, the OCA and OSBA were settling parties in UGI's and PGW's most-recent base rate cases and supported revenue increases despite the COVID-19 pandemic. CAUSE-PA and CEO did

⁵ *Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2019-3015162 (Opinion and Order entered Oct. 8, 2020) ("UGI Gas 2020").

⁶ *Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2018-3006814 (Opinion and Order entered Oct. 29, 2019).

⁷ *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Opinion and Order entered Nov. 19, 2020) ("PGW 2020").

not oppose the UGI settlement, and CAUSE-PA did not oppose the PGW settlement (CEO was not a party).

Nevertheless, the OCA, OSBA, CAUSE-PA and CEO offered generalized opposition to any rate relief for PAWC. The OCA also presented testimony and exhibits of witnesses purporting to show that PAWC should *reduce* its rates by \$37.4 million for 2021,⁸ based on the OCA-recommended returns on equity of only 8.00% for water and 8.05% for wastewater and despite uncontroverted evidence that, by 2022, PAWC will have invested over \$1.64 billion in new plant and equipment since the end of the fully projected future test year (“FPFTY”) in its last base rate case.⁹

The OCA’s litigation position is unreasonable on its face for all the reasons discussed in the Company’s Main Brief and as evidenced by the determination of I&E that PAWC has proven the need for rate relief at least as high as that agreed to in the Settlement. Yet, the most disconcerting aspect of the OCA’s presentation is the OCA’s refusal to accept settled law and PUC precedent on issues that represent virtually all of the difference between the OCA’s recommended rate decrease and the increase the Settlement would authorize. This is epitomized by the fact that the OCA chose to take positions in this case that the PUC soundly rejected in the two most recent litigated base rate cases in Pennsylvania: *Pa. P.U.C. v. UGI Utils., Inc. – Elec. Div.* (“*UGI Electric 2018*”)¹⁰ and *Pa. P.U.C. v. PPL Elec. Utils. Corp.* (“*PPL 2012*”).¹¹ Significantly, *UGI Electric 2018* was unanimously affirmed by the Commonwealth Court in

⁸ OCA Exhibit LA-6, p. 2 line 21, cols. (B) and (D).

⁹ PAWC St. 1, pp. 8-9. *See* PAWC M.B., p. 12.

¹⁰ Docket No. R-2017-2640058 (Opinion and Order entered Oct. 4, 2018).

¹¹ Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012).

January 2020 upon the appeal *of the OCA itself*¹² – a fact one would not discern from the OCA’s Main Brief, which does not even cite the Court’s decision.

The PUC’s orders in *UGI Electric 2018* and *PPL 2012*, which are discussed extensively in PAWC’s Main Brief,¹³ resolve many important issues in this proceeding, including:

- The use of end-of-FPPTY rate base;¹⁴
- Approval of performance-based compensation;¹⁵
- Rejection of a hypothetical capital structure;¹⁶ and
- Not relying on one methodology to determine the cost of capital without checking the validity of that methodology’s results against other cost-of-equity analyses.¹⁷

In the same vein, the OCA’s Main Brief disregards other significant PUC determinations that contradict the litigation positions it is taking here. Thus, the OCA recommends an 8.00% return on equity for water (8.05% for wastewater) without even mentioning the *Report on the Quarterly Earnings of Jurisdictional Utilities* released by the Commission on October 29, 2020, based on data through September 28, 2020,¹⁸ which determined that the return on equity for use with water utilities’ Distribution System Improvement Charge (“DSIC”) is 9.90%.

Similarly, the OCA’s discussion of the amortization period for “unprotected” Excess Accumulated Deferred Income Taxes (“Excess ADIT” or “EADIT”) never mentions that the OCA was a party to settlements of prior PAWC base rate cases explicitly providing that repair

¹² *McCloskey v. Pa. P.U.C.*, 225 A.3d 192 (Pa. Cmwlth. 2020). See PAWC M.B., pp. 5 and 15-16.

¹³ See PAWC M.B., Table of Authorities, pp. (v) and 5-7.

¹⁴ See *id.*, pp. 12-16.

¹⁵ See *id.*, pp. 21-24.

¹⁶ See *id.*, pp. 7 and 40-41.

¹⁷ See *id.*, pp. 43-44.

¹⁸ *Report on the Quarterly Earnings of Jurisdictional Utilities*, Docket No. M-2020-3021797 (Oct. 29, 2020) (“October 29, 2020 Quarterly Earnings Report”).

deductions (representing the bulk of the EADIT at issue here) should be “normalized” and, therefore, would properly be treated as “protected” for ratemaking purposes and amortized over the life of the underlying property.¹⁹ In fact, in those prior cases, the OCA’s witness in this case, Mr. Smith, also testified for the OCA and strongly recommended normalizing repair deductions because doing so was in customers’ long-term interest. Mr. Smith’s endorsement of normalization for repair deductions in prior cases directly conflicts with his recommendation to treat repair-related EADIT as if it had *not* been normalized for ratemaking up to now.²⁰

In summary, an increase in PAWC’s operating revenues that is at least as high – or, in fact, higher – than that agreed to in the Settlement can be fully justified simply by applying settled law as set forth in recent prior decisions of the Commission, including *UGI Electric 2018*, *PPL 2012* and other directly applicable precedent discussed herein and in PAWC’s Main Brief. The difference between the OCA’s proposed rate decrease and the increase agreed to in the Settlement are attributable largely (if not entirely) to the OCA’s refusal to acknowledge and accept the holdings, determinations and guidance in the PUC’s prior, directly applicable decisions.

For the reasons set forth herein and in PAWC’s Main Brief and Statement in Support, the Settlement and the Stipulations with CAUSE-PA and CEO should be approved, and the ALJ and the PUC should find and determine that PAWC has justified an increase in revenue at least as high as that provided in the Settlement. The adjustments and recommendations of the non-settling parties that have not already been incorporated in the Settlement and Stipulations should be rejected.

¹⁹ See PAWC M.B., pp. 25-35.

²⁰ *Id.* See also Section VIII.B., *infra*.

III. OVERALL POSITION ON RATE INCREASE

In its original rate filing, PAWC sought approval of a total-Company increase in annual operating revenues of \$138.6 million over the two years of its proposed MYRP. Under the Settlement, the total-Company increase will be limited to \$70.5 million. And, that increase would be phased-in through three installments over two years (2021 and 2022) and reduced by an annualized \$10.5 million credit in each year. Consequently, the annualized increase in 2021 will be only \$40 million.²¹ Moreover, customers will not receive bills reflecting that initial increase until March 15, 2021.²²

The OCA, OSBA, CAUSE-PA and CEO oppose any increase in PAWC's rates during the COVID-19 emergency.²³ Relying on the testimony of its witness, Scott Rubin, the OCA argues that the emergency requires the Commission to adopt a theory – which Mr. Rubin concedes is “not the Commission’s standard approach to ratemaking” – that would eliminate the required balancing of the interests of customers and utility investors.²⁴ Similarly, CAUSE-PA argues for a new – but fundamentally arbitrary and standardless – “affordability” test that appears to mirror Mr. Rubin’s theory.²⁵ Notably, the OCA and CAUSE-PA paint with a very broad brush. They advocate insulating PAWC’s *entire* customer population from *any* increase in rates without regard to whether the modest increase proposed by PAWC – and the substantially reduced increase under the Settlement – could actually affect the “affordability” of all of those customers’ water or wastewater service.

²¹ Rates established in this case will be effective for service rendered on and after January 28, 2021. Therefore, the increased revenues PAWC will bill customers in 2021 will total only approximately \$37 million. *See* PAWC Statement in Support, p. 5.

²² PAWC M.B., pp. 2-3.

²³ OCA M.B., pp. 15-19; OSBA M.B., pp. 7-8; CAUSE-PA M.B., p. 21; CEO M.B., pp. 3-5.

²⁴ OCA M.B., p. 19.

²⁵ CAUSE-PA M.B., p. 14.

James Cawley, former chairman of the Commission and co-author of the leading treatise on ratemaking before the PUC,²⁶ testified on behalf of PAWC. Mr. Cawley refuted all of the arguments advanced by the parties contending that the COVID-19 emergency was a legally sufficient basis for denying the Company the opportunity to charge rates commensurate with a revenue requirement derived from accepted and approved ratemaking methodologies. Mr. Cawley explained that, contrary to opposing parties' claims, the long-standing principles of ratemaking consistently applied by the Commission require a proper balancing of customer interests and the interests of utility investors even during times of economic stress.²⁷

As Mr. Cawley also explained, the Commission has never taken the position that, during particularly good economic conditions, utilities may charge more than the revenue requirement indicated by traditional ratemaking methodologies in order to create a reserve, or "rainy day fund," to compensate for arbitrary constraints on rate increases during periods of economic stress. In short, the OCA and CAUSE-PA propose an asymmetrical – and decidedly unfair – approach. Utilities would bear all the risk of recovering less than their indicated revenue requirement during sub-par economic conditions but be denied the reward (recovery of more than their indicated revenue requirement) during better-than-average economic times. While Mr. Rubin contends that regulation should be a substitute for "competition," he wants to treat utilities the same as non-regulated entities only during sub-par economic conditions. He conveniently ignores the fact that unregulated companies always have the liberty to earn much higher returns during economic expansions, when utilities are still required to charge rates that produce lower, regulated returns.

²⁶ James H. Cawley & Norman J. Kennard, *A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission* (2018) ("*Guide to Utility Ratemaking*"), published by the PUC and available at: http://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf.

²⁷ See generally PAWC St. 14-R.

In contrast to the unbalanced and one-sided outcomes the OCA and CAUSE-PA advocate, the consistently-applied ratemaking principles Mr. Cawley described support PAWC's proposed rate increase in this case and, therefore, fully justify the significantly reduced increase agreed to in the Settlement. Additionally, if approved, the Settlement would substantially expand the Company's low-income programs and implement various other changes that increase assistance to low-income customers during the COVID-19 emergency. As discussed below, none of the arguments advanced by the OCA and other parties provides a valid basis for their entrenched "no increase" position. That position violates established principles enshrined in the Public Utility Code,²⁸ the United States and Pennsylvania Constitutions, and long-accepted ratemaking practices and procedures. It would also produce real-world harm to the Company and its customers that far outweighs the temporary short-term effect of denying PAWC a reasonable opportunity to charge just and reasonable rates at the conclusion of this case.²⁹

Current Economic Conditions Do Not Preclude Rate Increases. The Commission has made clear that COVID-19 and its economic effects do not preclude increases in utility rates. On October 8, 2020, the Commission unanimously adopted a recommended decision approving the settlement of the base rate proceeding of UGI Gas that increased its gas distribution base rates.³⁰ As previously noted, this increase came on the heels of a \$30 million distribution base rate increase the Commission approved for UGI Gas that became effective in October 2019. Unmentioned in the OCA's Main Brief, the OCA was a party to the UGI Gas settlement and acknowledged, in justifying its support for the settlement, that "some businesses in Pennsylvania

²⁸ Hereafter all references to a "Section" are to the Pennsylvania Public Utility Code ("Code"), 66 Pa.C.S. §§ 101 *et seq.*, unless indicated otherwise.

²⁹ See PAWC St. 14-R, pp. 10-12.

³⁰ See *UGI Gas 2020, supra*.

have reopened and expanded” and that UGI had resumed construction activities.³¹ Significantly, unlike UGI Gas, PAWC never terminated or curtailed its construction activities.³²

Similarly, on November 19, 2020, the Commission approved a petition for partial settlement of the base rate proceedings of PGW that increases rates by \$35 million dollars.³³ The amount of the increase was 50% of the request sought by PGW, and incorporates a phase-in of the increase between January 1, 2021 and January 1, 2022. In approving the settlement, the Commission rejected modifications to the partial settlement by the ALJs in the proceeding that would have delayed the increase for six months due to the COVID-19 pandemic,³⁴ specifically noting that “it is in the public interest to provide a public utility with the financial ability to proffer safe, efficient and adequate service to its customers.”³⁵

Notably, in its October 8, 2020 order lifting the absolute termination-of-service moratorium imposed in the first months of the COVID-19 emergency, the Commission observed that the economic situation in the Commonwealth had improved and that the decline in the Commonwealth’s unemployment numbers, from 16.1% in April 2020 to 10.3% in August, was significant.³⁶ The same U.S. government source cited in the Commission’s order now shows that Pennsylvania’s unemployment rate dropped further, to 8.1%, in September 2020.³⁷ Mr. Cawley noted that, contrary to the “no increase” position of the OCA and CAUSE-PA, non-regulated companies are increasing their prices, as evidenced by recent increases in consumer prices (which consumers pay for everyday items, including utilities). Authorities cited by the *Wall*

³¹ See *Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2019-3015162 (Recommended Decision issued Aug. 29, 2020), p. 36.

³² PAWC St. 3-R, p. 4.

³³ See *PGW 2020*, *supra*.

³⁴ *Id.*, p. 43.

³⁵ *Id.*, p. 64.

³⁶ *Pub. Util. Serv. Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered Oct. 8, 2020), p. 2.

³⁷ U.S. Bureau of Labor Statistics, *Economy at a Glance (PA)*. Available at: <https://www.bls.gov/eag/eag.pa.htm>.

Street Journal viewed increases in the consumer price index as a “turning point” after the initial economic fallout of the COVID-19 emergency.³⁸ The OCA concedes that both the consumer price index and the producer price index have now returned to pre-pandemic levels, but simply asserts that these numbers do not reflect any economic recovery “in [the] context” of other data.³⁹ Broader economic measures refute that claim. Thus, although Mr. Rubin cited Federal Reserve Bank statistics showing declines in economic activity from March through June of 2020,⁴⁰ neither Mr. Rubin, in his testimony, nor the OCA, in its Main Brief, mentioned that the U.S. GDP experienced a dramatic 33.1% increase in the third quarter of 2020 – substantially offsetting the decline that occurred in the second quarter.⁴¹

As Mr. Cawley explained, established principles of utility ratemaking, as well as settled law, dictate that the methodology for determining just and reasonable rates should remain constant through good and bad economic conditions.⁴² Observing those principles avoids creating “yo-yo” effects that jeopardize utility operations and undermine the financial stability that is essential to utilities’ obtaining investment capital in the competitive market for capital, where no company has a monopoly.⁴³ Instead of arbitrarily reducing a utility’s entire revenue requirement in times of economic stress in an effort to provide subsidies to low-income customers – a subset of its entire customer base – reasonable rate designs and expanded customer assistance programs should be implemented to specifically target customers of lesser means who may be experiencing added difficulty paying their bills.⁴⁴ That is exactly what PAWC has

³⁸ PAWC St. 14-R, pp. 26-27.

³⁹ OCA M.B., p. 9 n.12.

⁴⁰ See OCA St. 2, p. 21.

⁴¹ U.S. Bureau of Economic Analysis, Gross Domestic Product, Third Quarter 2020 (Advance Estimate). Available at <https://www.bea.gov/news/2020/gross-domestic-product-third-quarter-2020-advance-estimate>.

⁴² See *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) (arbitrary changes in methodologies for determining rates can effect an unconstitutional confiscation of utility property). See PAWC St. 14-R, pp. 24-25.

⁴³ PAWC St. 14-R, p. 14.

⁴⁴ *Id.*

proposed to do in this case, as evidenced by the customer assistance and COVID relief measures in the Settlement and Stipulations. Such an approach is consistent with established precedent and avoids a large number of fundamental problems, including unpredictable revenues that would handicap utility construction planning, service, reliability and safety, and inequitable results where customers – even the wealthy – pay no increase whatsoever.⁴⁵

Denial Of PAWC’s Rate Increase Would Result In Unjust and Unreasonable Rates and Harm Customers. Both the OCA and CAUSE-PA contend that PAWC’s rates would be just and reasonable even if the Commission rejects the Company’s need for an increase in revenues demonstrated by applying traditional and accepted ratemaking principles. Both parties try to support their claims by crafting novel theories that have never been accepted by this or any other regulatory commission. Mr. Rubin, trying to support no increase in rates (or potentially a reduction), contends that the Commission is empowered to set rates outside of the traditional “zone of reasonableness” due to the COVID-19 emergency and, therefore, under current circumstances, PAWC’s existing rates should be deemed sufficient without an increase.⁴⁶ For its part, CAUSE-PA proposes that rates should be subject to an “affordability” requirement – a criterion of its own devising for which it cites no authority other than its own witness.⁴⁷

Both OSBA and CEO oppose any increase in reliance upon the arguments of the OCA and CAUSE-PA. OSBA, recognizing that law and sound ratemaking principles dictate that a utility’s investment in needed plant and equipment justifies increased rates, makes the unorthodox argument that the Commission should force PAWC to reduce its capital investment as a means of reducing or eliminating the need for a rate increase.⁴⁸ Yet, unrebutted testimony in

⁴⁵ *Id.*, p. 19.

⁴⁶ OCA M.B., pp. 10 and 15-16.

⁴⁷ CAUSE-PA M.B., p. 14 (emphasis in original).

⁴⁸ OSBA M.B., p. 9.

this case shows that exactly the opposite is called for during periods of economic slow-down like the present. Increased capital expenditures are exactly the stimulus needed to drive a depressed economy upward.⁴⁹ And, as PAWC witness Bruce W. Aiton testified, PAWC's continued capital spending, which is clearly needed to assure continued safe and reliable service, is also a "lifeline" to the contractors and vendors the Company engages to construct and supply its capital projects.⁵⁰

As PAWC's witnesses explained, absent rate relief and in light of PAWC's planned investment of \$1.16 billion in new or replacement plant in the 2020-2022 period, the Company's overall rate of return on an original cost basis will be only 6.31% and 5.62% as of December 31, 2021 and 2022, respectively. The indicated return on common equity is anticipated to be 7.85% and 6.70% as of December 31, 2021 and 2022, respectively, which is clearly far less than is required.⁵¹ Although Mr. Rubin asserts (without any citation) that this will be sufficient because "most Pennsylvania businesses" would be happy with such a return,⁵² these amounts are clearly insufficient and well below the 9.90% return on common equity recently calculated by the Commission and authorized for water company distribution system improvement charges.⁵³ The testimony of Mr. Cawley established that the alternative – and unapproved – approach to ratemaking theorized by Mr. Rubin (and reflected in the general opposition to a rate increase by the other parties) is deeply flawed for two principal reasons.

First, Mr. Rubin's theory is contrary to the "most fundamental principle of base ratemaking" for utilities that furnish essential services, which dictates that "rates should be set so

⁴⁹ See PAWC St. 15-R.

⁵⁰ PAWC St. 3-R, p. 14.

⁵¹ PAWC St., 1, p. 7.

⁵² OCA M.B., p. 5. The inadequacy of OCA's alternative proposed return on equity ("ROE") is addressed in Section IX *infra*.

⁵³ *Quarterly Earnings Report* (Oct. 29, 2020), p. 27.

that a utility has a reasonable opportunity to recover the costs prudently incurred in providing service and to earn a fair return on its investment in property used and useful in the public service.”⁵⁴ Under Mr. Rubin’s theory, a utility commission could determine – without any clear standard or objective criterion to guide it – that because some unspecified number of customers are adversely affected by economic conditions and may have difficulty paying their bills, rates should not be increased for any customer (regardless of the customer’s ability to pay).⁵⁵

This is not how ratemaking is done, even in times of economic distress. As Mr. Cawley explained:

Ratemaking methodology should be constant, not changing to reach a desired result in distressed economic conditions while remaining “traditional” during more prosperous economic conditions. It is permissible, however, especially during the rate design phase of rate cases, to lower rates for customers of lesser means by raising rates for others. Because government must protect all its citizens, such subsidization within reasonable bounds is entirely proper.

Patently impermissible and shortsighted, however, is reducing shareholder (or bondholder) returns below the otherwise appropriate level to subsidize customers of lesser means. If that occurs, investors raise the cost of capital to compensate for the increased risk of obtaining a fair return. If reducing returns is done in a substantial manner, confiscation occurs, and investors take their money elsewhere leaving the utility in ever more serious financial straits.⁵⁶

The arguments Mr. Rubin offers to convince this Commission to refashion long-standing utility precedent are fundamentally unsound. While conceding that rates are to be set within a “zone of reasonableness,” Mr. Rubin contends that under “certain conditions” there is no

⁵⁴ PAWC St. 14-R, pp. 20; PAWC M.B., pp. 38-40 (citing cases).

⁵⁵ PAWC St. 14-R, p. 6.

⁵⁶ *Id.*, pp. 14-15.

“overlap of interests” and regulators are free to set rates outside the zone⁵⁷ – essentially, to approve rates that are *inherently* unreasonable under constitutional standards. Again, Mr. Cawley made clear how this is not proper ratemaking:

Contrary to Mr. Rubin’s view, there is no such thing as a “null” zone of reasonableness. As long understood in the field of utility regulation, any rate below the traditional or normal zone of reasonableness is by definition confiscatory

It is not possible, as Mr. Rubin suggests, “to fairly balance the interests of all parties to the extent possible” by setting rates in a “null” zone below the “zone of reasonableness.” After a balancing of investors’ and customers’ interests, the Commission must set the rate within the zone to be “just and reasonable.” Indeed, the U.S. Supreme Court subsequently stated that “any rate selected . . . from the broad zone of reasonableness . . . cannot be attacked as confiscatory.” . . .

Thus, Mr. Rubin’s suggestion that, in times of economic distress, just and reasonable rates may be set in his “null” zone—instead of within—a zone of reasonableness simply invites the Commission to practice confiscation and is unconstitutional.⁵⁸

The two cases cited by the OCA that purportedly reflect ratemaking during times of economic distress do not support a different result. While the court in *Donham v. Pub. Serv. Comm’n*, 122 N.E. 397 (Mass. 1919) referred to the effects of the Spanish influenza as a factor in evaluating rates to be charged by the utility, it did *not* do so in order to endorse a broad-based “ability to pay” standard. Instead, the court noted that the pandemic was “a factor *seriously affecting receipts* during October and November, 1918” (emphasis added) after listing five *other* factors (including wages and the cost of equipment).⁵⁹ Similarly, Mr. Rubin’s reliance on the decision of a 1934 decision of this Commission to reduce utility rates based on the effects of the

⁵⁷ OCA M.B., pp. 13-17.

⁵⁸ PAWC St. 14-R, pp. 15-17 (emphasis in original; citations omitted).

⁵⁹ *Donham*, *supra*, 122 N.E. at 400 (emphasis added).

Depression ignores the fact that the Commission waited for *four years* after the onset of the Depression to reach that conclusion, and the decision itself appears to have been arbitrary and linked to political developments at the time.⁶⁰

Second, applying Mr. Rubin’s alternative theory of ratemaking to comprehensively block any rate increase will result in a variety of harms. For customers, denial of a rate increase will inevitably result in the loss of planned improvements to PAWC’s system.⁶¹ And while the denial of a rate increase may be seen as an immediate “harm” only to PAWC, the eventual harm to customers is well understood, as Mr. Cawley explained:

If consistently reasonable, rational, and carefully balanced (between ratepayers and investors) ratemaking is abandoned by, for example, adopting one-sided measures like Mr. Rubin’s approach, the result for PAWC and its customers will be (1) a loss of confidence by the investment community in the Commission’s willingness to provide PAWC with the financial wherewithal to persevere with its facilities improvement efforts; (2) a perception that investing in PAWC is riskier; and (3) therefore a demand for a greater yield on any investments made in PAWC’s securities, the costs of which would be borne by PAWC’s customers in higher rates. Instead of seeing progression and hard-fought momentum maintained, investors would see regression and backsliding.

Thus, in the end, PAWC’s ratepayers and their communities are the ones who will unnecessarily suffer if PAWC does not receive the financial resources necessary to invest in its construction programs as well as PAWC’s other programs and investments in advanced metering infrastructure, water source protection, water treatment, and operational efficiency.⁶²

In this proceeding, PAWC quantified the economic benefits arising from its planned investments, which totaled approximately \$540 million in 2020 and \$460 million in each of 2021 and 2022. That increase in economic activity would create over \$286 million (in 2020) and \$245

⁶⁰ See PAWC St. 14-R, pp. 29-32; PAWC St. 14-RJ, p. 4.

⁶¹ PAWC St. 14-R, pp. 10-11.

⁶² *Id.*, pp. 12-13 (citing PAWC St. 2, pp. 5-12, 15-22, and 27-41).

million (in each of years 2021 and 2022) in incremental gross regional product in the Company's service territory, including between \$17 and 20 million in additional state and municipal tax revenue. On an annual basis, the economic activity flowing from the Company's capital expenditures has also been shown, by detailed economic modeling, to support 4,400 jobs in 2020 and over 3,700 jobs in each of 2021 and 2022.⁶³ Given the vagueness of Mr. Rubin's theory, it is not even clear under what economic conditions PAWC would be permitted to return to the Commission for a rate increase to advance such investments.⁶⁴ Furthermore, OSBA's proposal that the Commission require PAWC to reduce its capital expenditures if the Commission approves a rate increase makes no sense in light of OSBA's economic concerns, as these types of expenditure will help, not hinder, the local economies that the Company services and the contractors and vendors it engages, as explained previously.

PAWC's FPFTY Data Is Properly Considered by the Commission. In addition to its alternative ratemaking theory, the OCA and its witness, Mr. Rubin, also assert that the Commission cannot rely on PAWC's FPFTY projections in light of the COVID-19 pandemic.⁶⁵ As noted above, the Commission has already observed that the economic situation in Pennsylvania has improved and approved a rate increase for another utility on that basis. Mr. Cawley explains that the OCA's advocacy for regulatory distrust and rejection of PAWC's FPFTY because of general uncertainty of existing or anticipated economic conditions is unsound public policy and is inconsistent with both basic tenets of ratemaking and the General Assembly's endorsement of the Commission's use of a FPFTY to establish a representative level of prospective rates.⁶⁶ The OCA and Mr. Rubin never identify any specific component of

⁶³ PAWC St. 15-R, pp. 20-21.

⁶⁴ PAWC St. 14-R, p. 19.

⁶⁵ OCA M.B., pp. 18-19.

⁶⁶ PAWC St. 14-R, p. 23.

PAWC's FPFTY that is actually unreliable, and even the OCA's own witness, Ralph Smith, abandoned proposed adjustments to PAWC's revenues based on changes in water usage that Mr. Smith originally thought could be attributed to COVID-19.⁶⁷ The OCA's proposal for wholesale rejection of PAWC's FPFTY should be rejected.

The Expansion of PAWC Low-Income Programs Will Mitigate the Effects of Necessary Rate Increases. As discussed in Section XIII and XIV, PAWC is taking significant steps to provide assistance to customers, particularly low-income customers, during the COVID-19 pandemic and in the future. The Company agreed to adopt interim measures suggested by other parties to this proceeding to assist customers in the immediate wake of the pandemic, including waiving the good faith payment requirement for PAWC's H2O Help to Others Hardship Fund for one year from the date of a final order in these proceedings,⁶⁸ waiving reconnection fees for customers at or below 200% of the federal poverty level ("FPL") for one year from a final order in these proceedings,⁶⁹ and permitting customers to self-certify income for purposes of qualifying for PAWC's H2O Help to Others Hardship Fund for a period of time.⁷⁰ The Company also agreed to undertake permanent actions including creating a low-income advisory group,⁷¹ expanding community outreach to communities in need within PAWC's service territories to include target areas of significant need,⁷² increasing the Company's annual contribution to the Hardship Fund from \$400,000 to \$500,000 for water and \$50,000 to \$100,000 for wastewater,⁷³ and identifying new sources of funding for the Hardship

⁶⁷ See PAWC M.B., p. 19.

⁶⁸ CEO Stip. ¶ 2, Joint Petition ¶ 35.

⁶⁹ CEO Stip. ¶ 1, Joint Petition ¶ 34.

⁷⁰ CEO Stip. ¶ 3, Joint Petition ¶ 36.

⁷¹ CEO Stip. ¶ 9, Joint Petition ¶ 43.

⁷² CEO Stip. ¶ 4, Joint Petition ¶ 37.

⁷³ PAWC M.B., p. 61. See also Joint Petition ¶ 38; CEO Stip. ¶ 5.

Fund.⁷⁴ Furthermore, the Company proposed to increase the Company's low-income bill discount for customers at or below 150% of the FPL to include, in addition to the existing 85% discount on the water service charge and 20% total wastewater bill discount, an additional 10% discount off the volumetric portion of their water bill and increasing the 20% total wastewater bill discount to 30%.⁷⁵ The cumulative impact of these and other actions taken by the Company to bolster its low-income programs will mitigate the impact of the necessary rate increase on the Company's low-income customers.

IV. PAWC'S PROPOSED MULTI-YEAR RATE PLAN

The OCA has ignored the Settlement term committing PAWC to withdraw its proposed MYRP if the Settlement is approved. Consequently, the OCA's Main Brief presents arguments against PAWC's initially proposed MYRP that repeat the direct testimony of its witness, Mr. Rubin.⁷⁶ If the Settlement is approved, all of the issues that pertain to, or flow from, the Company's proposed MYRP are moot.⁷⁷

PAWC firmly believes that the Settlement should be approved. If the Settlement is not approved, the ALJ and the PUC would then have to consider PAWC's initial rate proposal (i.e., a two-year MYRP consisting of proposed increases of \$92.4 million and \$46.2 million in each of RY1 and RY2, respectively). Only for that reason are the three principal arguments advanced by the OCA addressed briefly below.

⁷⁴ Joint Petition ¶ 43

⁷⁵ PAWC M.B., p. 60. *See also* PAWC St. 4, pp. 46-47.

⁷⁶ OCA M.B., pp. 20-23.

⁷⁷ Adjustments proposed by OCA witnesses Smith and Rothschild to reduce the Company's RY2 revenue requirement and rate of return, respectively, are tied to the proposed MYRP. OCA witness Alexander's proposal to require PAWC to adopt customer-service performance metrics is a function of the proposed MYRP and, therefore, also becomes moot if the Settlement is approved. *Id.*, p. 20.

The OCA contends that a two-year MYRP should not be adopted at this time because it requires projections for 2022 that Mr. Rubin claims are “uncertain” in a COVID environment.⁷⁸ This argument ignores the fact that the increase proposed for RY2 was largely the product of PAWC’s planned construction of plant and equipment, and changes in expenses were not a significant element of RY2 revenue requirement. And, in contrast to Mr. Rubin’s conjecture about the validity of “projections,” PAWC presented substantial, un rebutted evidence that the Company is on-track to complete the plant additions planned for 2022 on time and within budget.⁷⁹ PAWC has not experienced COVID-related delays in its supply chain or contractor performance.⁸⁰ PAWC also presented un rebutted evidence that the COVID-19 emergency has not materially changed the long-term trend of declining customer consumption or altered the Company’s forecast of customer usage. Company witness Roach demonstrated that, adjusting for seasonal effects during the Spring and early Summer, usage data through August 2020 remain consistent with the Company’s forecast.⁸¹

OCA witness Rubin also took issue with PAWC witness Nevirauskas’ testimony that a MYRP benefits customers by reducing the number and frequency of future base rate cases.⁸² While Mr. Rubin agrees that a MYRP would make future base rate cases less frequent,⁸³ he contends that accelerating PAWC’s next base rate case is allegedly in customers’ interest. That unorthodox claim was based on Mr. Rubin’s unsupported contention that hastening PAWC’s next rate filing would force PAWC to implement a separate stormwater rate for its three combined sewer systems (“CSSs”) sooner. However, as PAWC explained, the time needed to

⁷⁸ *Id.*, p. 21.

⁷⁹ PAWC St. 3-R, pp. 3-4.

⁸⁰ *Id.*

⁸¹ PAWC St. 9-R, pp. 2-6.

⁸² OCA M.B., p. 21.

⁸³ In fact, reducing the frequency of rate cases and mitigating regulatory lag are factors the PUC believes should be considered in assessing alternative ratemaking mechanisms. *See* 52 Pa. Code § 69.3302(a)(10).

collect and analyze data to lay the groundwork for developing a stormwater rate will not be shortened by forcing PAWC to file another rate case sooner, and it is illogical to think that it would.⁸⁴ In any event, the Settlement substantially resolves the stormwater issue. Under the Settlement, PAWC agrees to develop potential cost recovery and rate methodology options for CSSs, provide two yearly reports to the parties in this case, and present its analysis for consideration in its next wastewater base rate case.⁸⁵

Finally, Mr. Rubin opposed PAWC's originally proposed MYRP claiming that its implementation would differ from that of MYRPs adopted in other jurisdictions.⁸⁶ Specifically, Mr. Rubin claimed that other jurisdictions permit (or require) mid-course changes to the revenue requirement forecasted for future rate years under their MYRPs to facilitate reconciling those forecasts to actual performance. Neither Mr. Rubin nor the OCA provided citations to any case(s) that would support that assertion. Moreover, Mr. Rubin simply ignored an important distinction. Other jurisdictions regularly adopt MYRPs of four years (or longer) into the future. PAWC proposed a very modest MYRP of two years – only one year beyond a standard FPFTY. Indeed, PAWC did so specifically because this was its first proposed MYRP. Additionally, as previously explained, PAWC's originally requested increase for RY2 was largely the product of its investment in new plant and equipment in 2022. Contrary to Mr. Rubin's speculation that PAWC would fall short of its projected investment, PAWC has an excellent track record of completing its forecasted plant additions on time.⁸⁷

⁸⁴ PAWC St. 3-R, pp., 6-8. Ascertaining the impervious area (the most prevalent billing determinant for a stormwater rate) may require input data from aerial photography, geographic interface system (GIS) mapping, orthographic projections, property tax records and actual ground-level observations. *Id.*, pp. 7-8.

⁸⁵ Joint Petition ¶ 71.e.

⁸⁶ OCA M.B., pp. 21-22. Significantly, Mr. Rubin conceded that MYRPs are "routinely" used in a number of other jurisdictions. *Id.* Thus, the Pennsylvania Legislature, by authorizing MYRPs in Section 1330 of the Code, brought Pennsylvania in line with a multi-jurisdictional trend approving alternative ratemaking methods like the MYRP.

⁸⁷ PAWC St. 1, Schedule RPN-3, p. 2 (the variance between forecasted and actual plant additions for the 24-month period encompassing the FTY and FPFTY in PAWC's last base rate case was a mere 0.48%).

V. RATE BASE

A. Utility Plant In Service

No party has proposed adjustments to disallow any portion of the utility plant in service PAWC used to establish the revenue requirements for its historic test year (2019), future test year (2020), FPFTY or RY2. Thus, the parties agree that PAWC's claimed investment in utility plant in service for all of those test years is prudent and reasonable. Issues that have been raised regarding PAWC's utility plant in service and rate base relate only to the use of average versus year-end values, as addressed below.

B. Average Versus Year-End Rate Base

The OCA, disregarding directly controlling PUC and Commonwealth Court precedent, clings to its discredited position that using end-of-FPFTY rate base is not lawful or appropriate.⁸⁸ The OCA's Main Brief does not discuss – or even mention – the PUC's final order in *UGI Electric 2018* approving the use of end-of-FPFTY rate base. The PUC approved the use of end-of-FPFTYs because doing so: (1) follows the Legislative intent underlying the amendment to Section 315(e) authorizing FPFTYs; (2) produces just and reasonable rates; and (3) mitigates regulatory lag while reducing the frequency of rate cases. Similarly, the OCA did not discuss, or even mention, the Commonwealth Court's unanimous opinion that affirmed *UGI Electric 2018*. Notably, the OCA itself was the appellant in that case, where the Court rejected all the arguments the OCA tries to advance in this case.⁸⁹

⁸⁸ See OCA M.B., 23-25.

⁸⁹ *McCloskey*, 225 A.3d at 207-208 (holding that the PUC's "interpretation is supported not only by Section 315(e)'s plain language, but also by the purposes of Act 11, which were to mitigate the risks of regulatory lag and to aid in the resolution of the aged and aging nature of Pennsylvania's utility infrastructure").

The OCA argues that the PUC's Act 11 implementation guidance, which clearly contemplated and accepted the use of end-of-FPFTYs,⁹⁰ would not apply here because PAWC proposed a MYRP and employed a year-end rate base (and associated annual depreciation accrual) for RY2 of its MYRP.⁹¹ The OCA's argument is wrong for two principal reasons.

First, all of the reasons underlying the PUC's guidance for use of end-of-test year rate base for FPFTYs are equally applicable to the last year of a MYRP. In short, the OCA is elevating form over substance by trying to create a distinction without a difference.

Second, and more importantly, the OCA once again ignores the terms of the Settlement, which provides that PAWC is withdrawing its MYRP. The remaining test year (RY1) is, therefore, a FPFTY, as the Company explained in its Main Brief (pp. 12-15). Accordingly, for purposes of assessing the revenue requirement that supports the Settlement, it is necessary and appropriate – and required by PUC and Commonwealth Court precedent – to employ a rate base and annual depreciation accrual based on PAWC's rate base as of December 31, 2021.

The tables provided as Appendix A to the Company's Main Brief show the revenue requirement for each of RY1 and RY2 under the Company's originally proposed MYRP. Therefore, in assessing the revenue requirement for the FPFTY ending December 31, 2021, the rate base for RY1 shown in Appendix A must be increased by \$131,810,840 on a total-Company basis to state the Appendix A rate base as of the end of that year.⁹² For the same reason, the annual depreciation shown in Appendix A to the Company's Main Brief must be increased by \$2,631,930 on a total Company basis to properly state depreciation expense as of December 31,

⁹⁰ *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Supplemental Implementation Order entered Sept. 21, 2016). See PAWC St. 1-R, pp. 35-39 (explaining in detail the PUC's guidance).

⁹¹ See OCA M.B., p. 24.

⁹² See PAWC M.B., p. 14.

2021. The total additions to rate base and annual depreciation are shown separately for each of the Company's water and wastewater districts in PAWC Statement No. 5-R at pages 3-4.

C. Deduction From Rate Base Of EADIT

As explained in PAWC's Main Brief (p. 17), OCA witness Smith proposed a highly accelerated amortization of certain "unprotected" Excess ADIT contrary to the agreement reached in earlier settlements with PAWC about how the principal component of unprotected ADIT should be treated for ratemaking purposes. The amortization issue was addressed in Section VIII of PAWC's Main Brief and is also addressed in Section VIII of this Brief, which explains why the OCA-proposed accelerated amortization should not be adopted.

However, there is an inter-relationship between the Excess ADIT amortization and rate base because the unamortized portion of Excess ADIT is deducted from rate base. The OCA acknowledges this inter-relationship and concedes that adopting the accelerated amortization it proposes would require increases to PAWC's rate base of approximately \$30 million in each of 2021 and 2022 (a two-year total rate base increase of nearly \$60 million). Thus, the OCA confirms that its proposed adjustment would produce a temporary, short-term reduction in revenue requirement followed by a large increase in revenue requirement driven by both the expiration of the amortization and the concomitant increase in the Company's rate base.⁹³

D. Cash Working Capital

The OCA's Main Brief confirms that the OCA does not dispute the methodology PAWC used to establish its cash working capital requirement. The adjustments to cash working capital proposed by the OCA are concomitant to its proposed adjustments to the Company's operating

⁹³ See PAWC M.B., p. 36; Tr. 764-767.

and maintenance expenses. As explained in PAWC's Main Brief (pp. 20-24), the OCA's proposed adjustments are unsupported, contravene PUC precedent and should be rejected.

VI. REVENUES

In its Main Brief (pp. 18-19), PAWC addressed OCA witness Smith's criticisms of the Company's adjustment for declining residential usage and pointed out that Mr. Smith has withdrawn his proposals that would increase pro forma present rate revenues for RY1 and RY2. Notwithstanding its own witness' testimony, the OCA continues to assert that the PUC should reject PAWC's proposed reduction to 2020 residential revenue to reflect the trend of declining per-customer residential consumption delineated by Mr. Roach.⁹⁴ Astonishingly, the OCA's Main Brief never even mentions Mr. Smith's surrebuttal testimony and final revenue requirement summary schedules (OCA Exhibit LA-6), which abandon Mr. Smith's original adjustments to PAWC's present rate revenues for RY1 and RY2 advanced in his direct testimony.⁹⁵ The Company's final revenue claims were reflected in PAWC Exhibit 3-A Revised, which shows pro forma operating revenues at present rates for RY1 of \$642,715,434 (water operations) and \$73,100,482 (wastewater operations) – the same figures that appear in OCA Exhibit LA-6 and Appendix A.1 (Table I) of the OCA Main Brief.⁹⁶ In addition, Appendix A.3 (OCA Exh. LA-8) of the OCA Main Brief does not contain Schedules C.1.B to C-1.H that the OCA purports to rely upon for its alternative declining residential usage adjustment for RY2 because that proposal was withdrawn by Mr. Smith in his surrebuttal testimony. Indeed, Mr. Smith made clear that he is no longer pursuing adjustments to PAWC's operating revenue claims for RY2 related to declining usage and other items:⁹⁷

⁹⁴ OCA M.B., p. 26.

⁹⁵ See OCA St. 2, pp. 51-55; OCA Exh. LA-1, Schs. C.1.B to C-1.H, line 1; OCA Exh. LA-2, Sch. C-1.

⁹⁶ The same revenue figures also appear in Appendix A to PAWC's Main Brief.

⁹⁷ OCA St. 2SR, pp. 56-57.

PAWC has identified other issues in its rebuttal including (1) declining residential and commercial consumption, (2) changes in revenue due to the change in number of customers, and (3) change in chemical and power costs. I am not pursuing further adjustments for these items in the context of the 2022 Rate Year.

In short, the OCA's Main Brief creates the false impression that the Company's operating revenue claims remain in dispute.

VII. OPERATING AND MAINTENANCE EXPENSES

A. Payroll Costs – Prorating Wage And Salary Increases

The OCA opposes the Company's annualization of net effects of the 2022 wage and salary increases as of the end of RY2.⁹⁸ In so doing, the OCA has not addressed the *UGI Electric 2018* decision (pp. 61-63), where the Commission explicitly approved an annualization calculated in the same manner PAWC used in this case to recoup costs incurred over the course of the FPFTY.⁹⁹ The OCA has not offered anything new in this case and there is no reason to depart from the Commission's prior holding on this issue.¹⁰⁰

B. Performance Based Compensation (PAWC and Service Company)

PAWC and the American Water Works Service Company ("Service Company") provide three types of compensation to their employees: (1) base pay; (2) benefits; and (3) eligibility for compensation under American Water's Annual Performance Plan ("APP") and Long Term Performance Plan ("LTPP").¹⁰¹ The OCA does not challenge the reasonableness of the overall compensation levels for PAWC and Service Company employees, as evidenced by Mr. Smith's

⁹⁸ OCA M.B., p. 27.

⁹⁹ See PAWC M.B., pp. 20-21.

¹⁰⁰ This issue will be moot if the Settlement is approved because Mr. Smith's payroll-related expense adjustments apply only to 2022 (RY2). See *id.*, p. 21.

¹⁰¹ PAWC St. 6, pp. 6-17.

acceptance of PAWC's payroll-related expense claim for RY1.¹⁰² Nonetheless, the OCA contends that the PUC should disallow one-half of PAWC's expense claim for APP compensation and 100% of LTPP compensation earned by PAWC and Service Company employees.¹⁰³ The OCA claims that its proposed disallowances reflect the portion of employee performance compensation based on financial performance metrics that allegedly benefit "shareholders" and not customers.¹⁰⁴

The OCA's proposed disallowances are contrary to solid Commission precedent, which is directly on point. As explained in PAWC's Main Brief (pp. 22-23), the PUC has determined that a utility's performance compensation costs are properly included in operating expenses for ratemaking purposes where the compensation program *as a whole* includes both financial and operating performance goals that benefit customers.¹⁰⁵ In all of those prior decisions, the Commission declined to parse the degree of customer benefit that a performance compensation plan produces, weigh those benefits against alleged "shareholder" benefits, and permit recovery of some – but not all – of the utility's costs, as the OCA urges the PUC to do in this case. The OCA has not even mentioned this adverse precedent in its Main Brief.

Instead, the OCA cites two water rate orders from other jurisdictions denying a portion of performance compensation expense claimed by American Water utilities operating in California and Kentucky. This attempt to support Mr. Smith's proposed disallowances must fail for two principal reasons. First, PAWC presented substantial unrefuted evidence that the APP and LTPP

¹⁰² OCA M.B., Appendix A.2 (Table II); *see also* OCA St. 2, pp. 60-62. Mr. Smith proposed adjustment to RY2 salaries and wages based on his "average" test year methodology, which has been rejected by the Commission as explained in Section VII.A, *supra*.

¹⁰³ OCA M.B., pp. 27-30, Appendix A.2 (Table II) and Appendix A.3 (OCA Exh. LA-8, Schs. C-6, C-9 and C-10).

¹⁰⁴ OCA M.B., pp. 27-30.

¹⁰⁵ *See, e.g., UGI Electric 2018*, pp. 73-74; *PPL 2012*, p. 26; *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711, pp. 20-21 (Order entered July 31, 2008); *Pa. PUC v. PPL Gas Utils. Corp.*, Docket No. R-00061398, p. 40 (Order entered Feb. 8, 2007).

are an integral part of the total compensation package necessary to compete for and retain qualified employees so that customers continue to receive safe and reliable service.¹⁰⁶ As Ms. Gress testified, safety, reliability and customer service are all metrics utilized in the APP for eligible employees, and by satisfying key financial objectives under both performance compensation plans, PAWC is able to maintain access to capital at reasonable rates.¹⁰⁷ Significantly, PAWC presented a detailed third-party compensation analysis demonstrating that its total employee compensation, including performance compensation, is reasonable¹⁰⁸ – the same evidence the PUC found to be determinative in *PPL 2012* and *UGI Electric 2018*. The ratemaking treatment of performance compensation expense in other jurisdictions is not a valid reason for the Commission to disregard its own precedent on this issue. Second, the OCA’s discussion of recent California-American Water and Kentucky-American Water decisions (OCA Main Brief, pp. 28-29) is misleading. Other state commissions have vetted and approved APP and LTPP costs for PAWC’s affiliates in Iowa, Indiana, Virginia and West Virginia consistent with the criteria the PUC has established for deciding when a Pennsylvania utility’s performance compensation expense will be recoverable.¹⁰⁹

Finally, the OCA suggests that stock-based compensation is a dilution of shareholder equity and, therefore, is not a cash-based expense that should be included in operating expenses for ratemaking purposes.¹¹⁰ However, as Mr. Smith acknowledged, the Company is required to expense stock options on its financial statements under Generally Accepted Accounting Practices, specifically, Accounting Standards Codification 718.¹¹¹ Furthermore, it is not a valid

¹⁰⁶ See PAWC M.B., pp. 23-24.

¹⁰⁷ PAWC St. 6, pp. 10-11; PAWC St. 6-R, pp. 10-11 and 14-15; see also CONFIDENTIAL OCA Exh. LA-4, pp. 9-11, 18, 24-26 and 30.

¹⁰⁸ See CONFIDENTIAL OCA Exh. LA-4, pp. 52-57.

¹⁰⁹ See PAWC St. 6-R, pp. 12-14.

¹¹⁰ See OCA St. 2, p. 77.

¹¹¹ *Id.*

objection to rate recovery that an expense that must be recognized for accounting and financial reporting purposes does not require a cash outlay. Indeed, the Commission recently allowed PPL Electric and UGI Electric to recover stock-based compensation even though it is a “non-cash” expense.¹¹²

C. Capitalization Rate

As explained in the Company’s Main Brief (pp. 23-24), PAWC calculated capitalization rates using a multi-year average. This approach is identical to that repeatedly employed by the Company, and accepted by the OCA, in the past. The OCA relies on a single data point to derive its proposed capitalization rates contrary to established practice only because it produces the lowest expense level in this case.

D. Annual Depreciation

The OCA’s Main Brief confirms that the only issue raised by OCA witness Smith in this area pertain to annualizing depreciation expense as of the end of RY2 (December 31, 2022). If the Settlement is approved, that issue is moot because RY2 will be withdrawn. If the Settlement is not approved, then annualizing depreciation expense as of the end of RY2 is proper and consistent with the Commission’s holding in *UGI Electric 2018*. Additionally, as explained in Section V.B., *supra*, the annual depreciation for the RY1 (which becomes a standard FPFTY under the term of the Settlement withdrawing RY2) should properly be annualized as of December 31, 2021, consistent with the holding and direction provided by the PUC in *UGI Electric 2018*. Accordingly, the annual depreciation shown in Appendix A to the Company’s Main Brief must be increased by \$2,631,930 on a total-Company basis to properly state depreciation expense as of December 31, 2021.

¹¹² *PPL 2012*, p. 26; *UGI Electric 2018*, pp. 73-74.

VIII. TAXES

A. Taxes Other Than Income Taxes

The OCA's Main Brief confirms that the only issues raised by OCA witness Smith in this area pertain to annualizing certain taxes other than income taxes as of the end of RY2 (December 31, 2022). If the Settlement is approved, those issues are moot. If the Settlement is not approved, then annualizing taxes other than income taxes as of the end of RY2 is proper and consistent with the Commission's holding in *UGI Electric 2018*.

B. Income Taxes – Excess ADIT

The discussion of the amortization period for Excess ADIT in the OCA's Main Brief (pp. 31-35) entirely ignores extensive record evidence that definitively refutes the OCA's arguments and fully supports the Company's position on this issue:

- In prior base rate cases, the OCA committed to PUC-approved settlement terms requiring tax-book timing differences attributable to “repair” deductions to be “normalized” for ratemaking purposes;¹¹³
- Repair-related deductions represent the bulk (\$140 million) of PAWC's EADIT that the OCA proposes to amortize over three years;¹¹⁴
- In prior PAWC base rate cases, OCA witness Smith strongly supported normalizing repair-related deductions because doing so benefited customers by, among other things, preserving for customers \$213 million in repair deductions that PAWC could have kept for itself if it had not voluntarily adopted the normalization method;¹¹⁵
- Because PUC-approved settlement terms require the repairs component of PAWC's EADIT to be treated as subject to normalization,¹¹⁶ that component of EADIT should be deemed “protected” for ratemaking purposes;¹¹⁷

¹¹³ PAWC St. 10-R, pp. 18-19. *See also* PAWC M.B., pp., 32-34.

¹¹⁴ PAWC Exhibit JRW-2R, p. 1 (“Repairs”). *See* PAWC M.B., pp. 6 and 29-30.

¹¹⁵ *See* PAWC M.B., pp. 31-33; PAWC St. 10-R, pp. 18-19.

¹¹⁶ The Joint Petition for Settlement in the Company's 2011 base rate case at Docket No. R-2011-2232243 (Paragraph 8.g.) provides that “all capitalized repairs deductions claimed on a tax return have been normalized for ratemaking purposes and the appropriate related amount of tax effect of those deductions has been reflected as Accumulated Deferred Income Taxes as a reduction to PAWC's rate base.” *See* PAWC M.B., pp. 33-34. PAWC continued to use the normalization method, with the OCA's agreement and the PUC's approval, through the present time. *Id.*

¹¹⁷ *See* PAWC M.B., pp. 34-35.

- Tax-book timing differences that are normalized, and deemed “protected,” should be treated for ratemaking purposes “similar to what is done for book-tax timing differences related to accelerated tax depreciation”¹¹⁸ and, therefore, should be amortized using the average rate assumption method (“ARAM”), which approximates the remaining life of the underlying repair property.¹¹⁹
- By proposing a steeply accelerated three-year amortization period for PAWC’s EADIT (which consists largely of repair-related EADIT) the OCA is trying to renege on its earlier agreement to normalize repair deductions for ratemaking purposes; thus, the OCA seeks PUC permission to reverse its position and back out of a settlement commitment that the PUC had previously approved.

In sum, clear PUC precedent, i.e., the PUC’s approval of normalization commitments in prior PAWC settlements, supports the Company’s position on the proper amortization period for the EADIT the OCA wants the PUC, in contravention of its earlier orders, to amortize over a three-year period. The OCA’s position is also contrary to the position it took – and the PUC approved – in the settlement of Duquesne Light Company’s 2018 base rate case.¹²⁰ In that proceeding, the OCA initially proposed a short amortization period. In surrebuttal, the OCA withdrew its proposal because it agreed that ARAM established the proper amortization period for previously normalized repair-related EADIT and that using ARAM was in customers’ long-term best interest.¹²¹

Mr. Smith tried to minimize the significance of the PUC’s final order approving the settlement of Duquesne Light’s 2018 rate case by claiming PAWC is trying to treat the order as “precedent.”¹²² That is not correct; the Company never suggested the PUC’s Duquesne Light order has binding effect in this case. Rather, the Company pointed out that the PUC’s Duquesne

¹¹⁸ *Id.*, p. 33 (quoting the exact language from Mr. Smith’s direct testimony in PAWC’s 2011 base rate case).

¹¹⁹ *See id.*, p. 35. Mr. Smith conceded that tax book timing differences related to accelerated depreciation should be amortized using ARAM. OCA St. 1, p. 99.

¹²⁰ *Pa. P.U.C. v. Duquesne Light Co.*, Docket No. R-2018-3000124 et al. (Opinion and Order entered Dec. 20, 2018), p. 42.

¹²¹ PAWC St. 10, pp. 17-18; PAWC St. 10-R, p. 23. *See* PAWC M.B., p. 35.

¹²² OCA St. 2SR, pp. 28-29.

Light order has substantial persuasive value because it demonstrates that the Commission has previously determined that just and reasonable rates can be based on an ARAM-determined amortization period for repair-related EADIT. The PUC's Duquesne Light order is another important source of PUC guidance on how previously normalized repair-related EADIT should be amortized.¹²³

Although the OCA refuses to acknowledge the significance of a PUC order approving the settlement of a Pennsylvania utility's base rate proceeding, it urges the ALJ to grant precedential value to an order of the New Jersey Board of Public Utilities ("BPU") approving the settlement of a New Jersey utility's rate case.¹²⁴ Significantly, the OCA chose not to disclose that the New Jersey BPU order it relied upon approved a *settlement*. Moreover, contrary to the OCA's representations, that settlement, and the New Jersey BPU order approving it, do *not* support the OCA's position. The settlement provides for the amortization of "unprotected" EADIT over a period *five times longer* than the one the OCA has proposed in this case.

While the OCA ignores directly applicable PUC guidance, it argues that the Commission should follow decisions from California, New York and Tennessee, in addition to New Jersey.¹²⁵ Neither the California nor the New York cases the OCA relies upon stands for the proposition for which it is cited. And, while promoting a decision of the Tennessee Public Utility Commission, the OCA ignores decisions from other jurisdictions that *support* the Company's position.

The record in *Application of California-American Water Co.*¹²⁶ reveals that the California Public Utilities Commission ("CPUC") did not adopt a shortened amortization period for all

¹²³ PAWC St. 10-R, pp. 23-24.

¹²⁴ See OCA M.B., p. 34, n.26, citing *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. AX-18010001, WR18030233 (N.J. BPU, Oct. 28, 2020).

¹²⁵ OCA M.B., p. 34, n.26.

¹²⁶ 2018 Cal. PUC LEXIS 628, *194-197 (Cal. P.U.C. Dec. 20, 2018).

unprotected Excess ADIT. To the contrary, for plant related EADIT, which includes repair-related EADIT, the CPUC adopted California-American's proposal to use ARAM. The case supports the Company's position, not the OCA's.

The New York Public Service Commission ("NY PSC") order¹²⁷ cited by the OCA also does not support its position. Contrary to the proposition for which it is cited by the OCA, the NY PSC did *not* establish amortization periods for unprotected Excess ADIT. Instead, it directed jurisdictional utilities, including New York American Water Company, to "establish regulatory liabilities for the excess amounts, until the reversal of the protected excess [ADIT] is reflected in rates and the amortization of the unprotected excess amounts are [sic] addressed in a utility's next general rate change or in a sur-credit filing."¹²⁸ As of this date, New York American Water Company's EADIT balances continue to be deferred in compliance with the NY PSC's order, are not being amortized, and, in fact, no amortization period for unprotected EADIT has been established by the NY PSC.

The OCA cites but one decision, from Tennessee, that adopted a three-year amortization of "unprotected" Excess ADIT.¹²⁹ Yet, it chose not to inform the ALJ and the Commission of two other decisions, from the Indiana Utility Regulatory Commission ("Ind. URC") and the Kentucky Public Service Commission ("Ky. PSC"), that adopted and approved the use of ARAM to amortize "unprotected" Excess ADIT by PAWC's affiliates in those states. The Ind. URC approved a settlement of an Indiana-American Water Company rate case providing that Excess ADIT – both protected and unprotected – will be amortized pursuant to ARAM, which

¹²⁷ *Proceeding on Motion of the Comm'n on Change in Law that May Affect Rates*, Case 17-M-0815, 2018 N.Y. PUC LEXIS 393, *82-84 (Aug. 9, 2018).

¹²⁸ *Id.* at *46-47.

¹²⁹ *In Re Tennessee American Water Co.'s Response to the Comm'ns Investigation on the Impact of Federal Tax Reform on the Pub. Util. Revenue Requirements*, 2020 Tenn. PUC LEXIS 101, *4-10 (Aug. 3, 2020).

approximated 41.5 years in that case.¹³⁰ The Ky. PSC authorized Kentucky-American Water Company to amortize EADIT related to repair deductions pursuant to ARAM.¹³¹

The OCA also cites to the direct testimony of Mr. Smith¹³² to argue that its proposed three-year amortization is consistent with the manner in which PAWC proposes to return to customers “unprotected” EADIT that the Company amortized (or will have amortized) for financial reporting purposes from January 1, 2018 through the effective date of rates established in this case.¹³³ This was referred to as the “stub period.”¹³⁴ Mr. Smith’s contention – cited by the OCA in its Main Brief – is entirely incorrect. Beginning January 1, 2018, PAWC amortized its unprotected EADIT for financial reporting purposes *using ARAM* – not a three-year amortization. The unprotected EADIT that PAWC amortized (or will have amortized) per books from January 2018 through 2020 (using ARAM) the Company proposes to return to customers (for ratemaking purposes) over a three-year period. Mr. Smith (and the OCA) confused the amortization of unprotected EADIT (approximately 40 years based on ARAM) with the period when the annual ARAM-based amortization amounts will be returned to customers.¹³⁵

¹³⁰ *In the Matter of the Indiana Util. Regulatory Comm’n Investigation into the Impacts of the Tax Cuts and Jobs Act of 2017 and Possible Rate Implications under Phase 1 and Phase 2 for Indiana American Water Co.*, Cause No. 45032 S4 (Ind. URC June 24, 2020).

¹³¹ *In the Matter of Electronic Application of Kentucky-American Water Co. for an Adjustment of Rates*, Case No. 2018-00358, slip op. at 36 (Ky. PSC June 27, 2019).

¹³² OCA St. 2, p. 106.

¹³³ OCA M.B., p. 33.

¹³⁴ OCA St. 2, p. 106.

¹³⁵ A simple example illustrates the OCA’s confusion. Assume the Company had \$1,000 of unprotected plant-related Excess ADIT at January 1, 2018. Assume further that the Company amortized that amount using ARAM (an approximately 40-year amortization), producing annual amortization amounts of \$25 (\$1,000/40 years). Thus, at the end of 2020, PAWC would have amortized per books \$75 (\$25 x 3) and reduced its unprotected plant-based Excess ADIT from \$1,000 to \$925. For ratemaking purposes, PAWC would continue to amortize the remaining \$925 over 40 years, in annual increments of \$25. However, the \$75 it previously amortized *per books*, it proposes to return to customers, *in rates*, over a three-year period (the same duration over which customers would have received that \$75 if it had been returned to customers in rates at the same time it was being amortized, under ARAM, per books).

The OCA's contention that ARAM amortization violates the principle of intergenerational equity is also based on a flawed assumption.¹³⁶ The OCA wrongly asserts that intergenerational equity must match the "return" of unprotected EADIT to customers who paid rates in the past that allegedly produced the "excess." That is not how intergenerational equity is defined. And, it would be impossible to achieve intergenerational equity if the OCA's conception of the principle were accepted.

The population of individual customers is constantly changing, and attempts at the kind of matching the OCA proposes would necessarily always fall short. Contrary to the OCA's erroneous understanding, intergenerational equity is achieved when rate recognition of the cost of an asset (or, in this instance, the rate recognition of a tax benefit generated by that asset) reasonably matches the period over which the asset renders service to customers. Thus, irrespective of turn-over in individual customers, the utility's customer base at any point in time would pay only the fixed costs of the asset (e.g., depreciation and pretax return, offset by applicable tax benefits) that are actually being imposed on, or realized by, the Company at that point in time.¹³⁷

The use of ARAM achieves intergenerational equity because it properly distributes the benefits of EADIT amortization over the life of the underlying assets that generated the EADIT. The OCA's approach would create intergenerational *inequity* by distributing the benefits of EADIT amortization over a short three-year period – a mere fraction of the actual service life of the property that the EADIT is financing. EADIT benefits would be clustered in three years, while the plant that generated those tax benefits would remain in service – and its on-going costs

¹³⁶ OCA M.B., pp. 33-34.

¹³⁷ See PAWC M.B., p. 30.

would be borne by customers – over several decades into the future.¹³⁸ That outcome is the antithesis of intergenerational equity.

Finally, the OCA offers its unsubstantiated and unauthenticated Cross Examination Exhibits 1 and 2 to show that revenue requirement is lower in 2021 if a three-year amortization is used for unprotected EADIT in lieu of longer amortization periods.¹³⁹ The OCA's Cross Examination Exhibits, however, do not tell the whole story. The OCA abruptly truncates its analysis at the end of 2021 and ignores what happens when the three-year amortization ends at December 31, 2023. The expiration of the amortization in itself would cause PAWC's revenue requirement to increase by \$38.7 million per year.¹⁴⁰ Because the entire no-cost tax loan represented by the EADIT would be eliminated by December 31, 2023, the Company's rate base would increase by approximately \$116 million. That rate base increase would have to be financed at PAWC's weighted average pre-tax cost of capital, which would also add substantially to PAWC's revenue requirement. Thus, the OCA's proposal would cause a needless yo-yo effect consisting of a short-term, temporary reduction in rates followed by a significant, longer-term increase. The Company's proposal averts this unbalanced reduction/rebound effect and eliminates what would surely be a significant source of customer confusion and concern.¹⁴¹

IX. RATE OF RETURN

PAWC and the other Joint Petitioners reached agreement on a rate increase that will permit the Company to continue its planned investment in new and replacement plant and equipment, including investments necessary to meet the significant challenges posed by the

¹³⁸ PAWC M.B., pp. 35-36. PAWC St. 10, pp. 14-15.

¹³⁹ OCA M.B., pp. 32-33.

¹⁴⁰ OCA Exhibit LA-6, p. 3, line 20, col. C.

¹⁴¹ See PAWC M.B., p. 36.

small, troubled systems that the Company has acquired with Commission approval. In opposing PAWC's original filing and arguing that PAWC's rates should be reduced, the OCA and its witness, Aaron Rothschild, proposed an unreasonable ROE of only 8.00% (water) and 8.05% (wastewater),¹⁴² which are well below the authorized returns for virtually all water utilities in the United States for the last decade as well as the 9.90% ROE authorized by the Commission for the water utility DSIC based on data through September 28, 2020.¹⁴³

After a brief argument in support of the use of a hypothetical capital structure instead of PAWC's actual capital structure, the OCA devotes most of its discussion on rate of return issues in its Main Brief to a high-level recitation of Mr. Rothschild's methodology and a few general criticisms of the expert testimony of PAWC witness Ann Bulkley and her ROE recommendation of 10.8%. The Company discussed the validity of Ms. Bulkley's recommendation in its Main Brief and also explained the flaws in Mr. Rothschild's methodology.¹⁴⁴ While the methodological differences in ROE recommendations do not need to be resolved if the Settlement is approved, PAWC will address the OCA's arguments and criticisms and explain how, if properly corrected and adjusted, Mr. Rothschild's recommendation is consistent with Ms. Bulkley's recommendation.

A. Capital Structure

In its Main Brief, the OCA agreed with the Company's proposed capital structure for wastewater operations but argued that the Commission should adopt a hypothetical capital structure for PAWC's water operations based on the mean of the common equity ratios of the proxy group of water utilities used by OCA witness Rothschild. Relying on a 1958 Pennsylvania

¹⁴² OCA M.B., p. 37.

¹⁴³ See *October 29, 2020 Quarterly Earnings Report*, p. 27.

¹⁴⁴ PAWC M.B. pp. 40-49.

Superior Court case, *Riverton Consol. Water Co. v Pa. P.U.C.*,¹⁴⁵ the OCA asserted that PAWC is not entitled to an “ideal” capital structure and PAWC’s proposed capital structure was higher than that of its parent company American Water and the proxy group.¹⁴⁶

The Commission has made clear that the actual capital structure of a utility “represents the Company’s decision, in which it has full discretion, on how to capitalize its rate base.”¹⁴⁷ Furthermore, “absent a finding by the Commission that a utility’s actual capital structure is atypical or too heavily weighted on either the debt or equity side,” the Commission “would not normally exercise [its] discretion with regard to implementing a hypothetical capital structure.”¹⁴⁸ Here, PAWC witness Bulkley calculated the proposed capital structure of PAWC’s water operations using PAWC’s actual debt issuances and sources of capital, after removing wastewater-specific debt. She then analyzed the equity ratios of the utility operating subsidiaries of the Company’s proxy group and concluded that PAWC’s proposed capital structure was well within the range of the mean equity ratios of those companies.¹⁴⁹

The OCA’s proposal effectively ignores the Commission’s guidance, as the effect of Mr. Rothschild’s approach would be to require the Commission to adopt a hypothetical capital structure whenever a utility’s actual capital structure differs from a proxy group. Moreover, Mr. Rothschild relied on the capital structures of the companies in his proxy group at the holding company level, not the utility subsidiary level, and thereby incorporated corporate level debt that is not part of the regulated or financial capital structure of the operating utilities.¹⁵⁰ Because Mr. Rothschild’s proxy group is small, the wide range of equity ratios of his proxy group also

¹⁴⁵ *Riverton Consol. Water Co. v Pa. P.U.C.*, 140 A.2d 114 (Pa. Super. 1958) (“*Riverton*”).

¹⁴⁶ OCA M.B., pp. 36-37.

¹⁴⁷ *PPL Electric 2012*, p. 68.

¹⁴⁸ *Id.*

¹⁴⁹ PAWC St. 13, pp. 76-79.

¹⁵⁰ PAWC St. 13-R, p. 112-13.

skewed his calculations; if the median of his proxy group is used instead of the mean, PAWC's proposed equity ratio is only slightly greater (0.06 percent) than the median.¹⁵¹ PAWC's proposed structure is also clearly distinguishable from the capital structure at issue in *Riverton*, where the Commission adopted a hypothetical structure after a utility's capital structure shifted from 39.7% debt and 60.3% common equity to 69.7% debt and 30.3% common equity over a short period of time.¹⁵²

Because there is no evidentiary basis to conclude that PAWC's proposed capital structure is atypical, the Commission should adopt that structure and reject the OCA's proposal.

B. Cost Of Long-Term Debt

The OCA did not object to PAWC's proposed cost of long-term debt, but proposed that if PAWC's MYRP is approved, PAWC should be required to update its cost of debt before Year 2 rates become effective. If the Settlement is approved, this proposed update would be inapplicable.

C. Common Equity Cost Rate¹⁵³

1. Introduction and Legal Framework

In its Main Brief, the Company set forth the legal framework and standards applicable to a determination of a fair rate of return for utilities.¹⁵⁴ In implementing those standards, the Commission has explained (in *PPL 2012*) how different theoretical models for establishing the cost of common equity should be considered:

[W]e historically have primarily relied upon the DCF methodology in arriving at previous determinations of the proper cost of equity

¹⁵¹ *Id.*

¹⁵² *Riverton*, 140 A.2d at 121.

¹⁵³ In its Abridged Brief, the OCA did not follow the common outline sections relating to rate of return. In order to facilitate consideration of the arguments of the parties, the Company has adjusted its discussion of the OCA's arguments section to track the OCA's brief.

¹⁵⁴ PAWC M.B., pp. 38-39.

and utilized the results of methods, such as the CAPM and RP methods, as a check upon the reasonableness of the DCF derived equity return amount, tempered by informed judgment. As such, where evidence based on the CAPM and RP methods suggests that the DCF-only results may understate the utility's current cost of equity capital, we will give consideration to those other methods, to some degree, in determining the appropriate range of reasonableness for our equity return determination.¹⁵⁵

Consistent with this guidance, PAWC witness Bulkley calculated a cost of common equity under the models recognized by the Commission. As Ms. Bulkley explained:

To develop my ROE recommendation, I first developed a proxy group that consists of water and natural gas utility companies that face risks generally comparable to those faced by PAWC. I included both water and natural gas utilities in the proxy group because a proxy group composed only of water utilities would have resulted in an unreliably small group of only five companies. To that proxy group, I applied the Constant Growth form of the Discounted Cash Flow ("DCF") model, the Capital Asset Pricing Model ("CAPM"), the Empirical Capital Asset Pricing Model ("ECAPM"), and the Expected Earnings Analysis . . . [I]t is appropriate to rely on several ROE analyses because there are concerns among investors and regulators that the DCF model is not producing reasonable results at this time due to current conditions in capital markets. [For example,] the DCF model is producing individual company results as low as 4.34 percent; a result that is only slightly higher than PAWC's cost of long-term debt.¹⁵⁶

Ms. Bulkley provided detailed evidence as to why the DCF model was not producing reasonable results, which she summarized as follows:

Investors have responded to the recent escalation in the trade war between the U.S. and China and more recently the spread of COVID-19 by divesting higher-risk assets and purchasing lower-risk assets such as U.S. Treasury bonds or defensive sector equities such as utilities. . . . This has resulted in unprecedented volatility in financial markets as investors have rotated in and out of various assets classes responding to both positive and negative developments. Therefore, ROE estimation models which rely on

¹⁵⁵ *PPL 2012*, pp. 80-81; *accord UGI Electric*, p. 84.

¹⁵⁶ PAWC St. 13, p. 3.

recent market data must be interpreted with extreme caution. For example, the Constant Growth DCF model relies on the average share prices for the proxy companies, which have been extremely volatile in the last several months and are not likely representative of what should be expected during the period that PAWC's rates will be in effect.¹⁵⁷

In light of these market conditions, Ms. Bulkley considered the DCF results but gave additional weight to her CAPM analysis consistent with the Commission's guidance in *PPL 2012*:

While the share prices of utilities have declined in response to the economic effects of the COVID-19 pandemic, current utility valuations are still well above the long-term average. The current high valuations result in low dividend yields for utilities, which means that DCF models using recent historical data likely underestimate investors' required returns. Alternatively, my CAPM analysis includes estimated returns based on near-term and longer-term projected interest rates, considers Beta coefficients that reflect the fact that analysts expect utilities to trade similar to the market over the near-term, and relies on a forward-looking estimate of the market return. Therefore, it is important to place greater weight on the results of CAPM, which is not being affected by the high valuations of utilities and better reflects investors' expectations of market conditions over the period that the rates established in this proceeding will be in effect.¹⁵⁸

The OCA has two general criticisms of Ms. Bulkley's analysis. First, the OCA contends that the proxy group of companies selected by Ms. Bulkley for her analysis is improper because it included natural gas companies. Second, the OCA generally argues that Ms. Bulkley used a "non-market based approach which relies on historical data" and that her recommendation is "excessive" because her approach is purportedly flawed, speculative and reflects an erroneous discounting of the DCF model results.¹⁵⁹ As set forth in the following sections, none of these arguments have merit.

¹⁵⁷ PAWC St. 13, pp. 17-18.

¹⁵⁸ PAWC St. 13-R, p. 38.

¹⁵⁹ OCA M.B., pp. 38 and 50.

2. Cost of Equity Calculation

a. Proxy Group

To support her analysis, Ms. Bulkley constructed a proxy group of companies that are publicly traded and comparable to PAWC in fundamental business and financial respects. She began with 17 domestic utilities, and screened for a variety of characteristics, including payment of cash dividends, investment grade long-term issuer ratings, income of at least 70% derived from regulated operations, and no involvement in a merger or similar transaction during the analytical period.¹⁶⁰ Ms. Bulkley included nearly all the water utilities used by Mr. Rothschild in his proxy group,¹⁶¹ but Ms. Bulkley also included several natural gas companies due to the small number of comparable water companies.¹⁶²

While the OCA objects to the inclusion of natural gas companies because such companies have been included in mergers and acquisitions, the OCA does not acknowledge that water companies have also been involved in such transactions, and have even acquired natural gas companies in light of the similarity in operating characteristics and risk profiles.¹⁶³ The OCA also ignores the fact that other public utility commissions have accepted proxy groups consisting of both water and natural gas utilities given consolidation in the water industry.¹⁶⁴ Notably, almost ten years ago, the OCA itself advocated for proxy comparison groups of both water and natural gas companies in a water utility base rate proceeding.¹⁶⁵ Although the Commission did not approve the use of natural gas companies in a proxy group at the time when

¹⁶⁰ PAWC St. 13, pp. 38-39.

¹⁶¹ Ms. Bulkley's proxy group included all of the water companies in Mr. Rothschild's proxy group but excluded one utility engaged in a merger transaction. After that merger was completed, Ms. Bulkley incorporated that company into her proxy group. PAWC St. 13-R, p. 17.

¹⁶² PAWC St. 13, pp. 40-43.

¹⁶³ Compare OCA M.B., p. 75 and PAWC St. 13-R, pp. 43.

¹⁶⁴ See PAWC St. 13, pp 41-43; PAWC St. 13-R, p. 42.

¹⁶⁵ See *Pa. P.U.C. v. City of Lancaster-Bureau of Water*, R-2010-2179103 (Opinion and Order entered June 30, 2011), pp. 59-62.

a water-only proxy group of eight companies was available, the subsequent consolidation of water and gas utilities now support the use of a mixed utility proxy group, as other state regulatory agencies have found. In light of the evolution of water industry over the intervening decade, the Commission should accept Ms. Bulkley's proxy group.

b. Application of Constant Growth DCF Model

In its Main Brief, the OCA summarizes Mr. Rothschild's application of the Constant Growth DCF model but made no effort to address the criticisms of his method presented by Ms. Bulkley in her testimony.¹⁶⁶ In particular, the OCA simply notes that Mr. Rothschild is relying upon sustainable retention growth rates without explaining why that is appropriate in light of the Commission's historic preference for the use of earnings-per-share ("EPS") growth rates and recent prior rejection of sustainable growth rates.¹⁶⁷ And while the OCA repeatedly emphasizes the effects of the COVID-19 pandemic with respect to other considerations in this proceeding, its discussion of Mr. Rothschild's methodology fails to consider how current conditions in financial markets are likely to generate unreasonable DCF results that require consideration of other ROE models. As Ms. Bulkley explained:

While Mr. Rothschild's use of retention growth rates in the Constant Growth DCF model results in an estimate of growth that is over 100 basis points below the proxy group average growth rate relied on by both [I&E's expert witness] and me, it is not the only reason Mr. Rothschild's Constant Growth DCF model is producing unreasonable results. The other reason that Mr. Rothschild's Constant Growth DCF model is producing such low ROE estimates is the dividend yields for the water utilities, which are well below historical averages due to the current high valuation of water utilities. Mr. Rothschild acknowledges that P/E ratios for the water proxy group companies are high by historical standards. What he fails to recognize is that the high stock valuations are causing the dividend yields for the water proxy group companies to

¹⁶⁶ PAWC M.B., pp. 43-45; PAWC St. 13-R, pp. 70-80.

¹⁶⁷ See *UGI Electric*, p. 93.

be extremely low. As shown in Figure 5 of my Direct Testimony, these dividend yields are well below the annual average dividend yields for natural gas and water utilities since 2009. Furthermore, as shown in ALR-4, page 4, the dividend yield on the S&P 500 was 1.82 percent as of July 31, 2020, which is within the range of dividend yields that Mr. Rothschild relied on to calculate the Constant Growth DCF analysis for his water proxy group. It is highly unusual for the dividend yield on the S&P 500 to be roughly equal to the dividend yields for water utilities. This is evidence of the distortion in water utility stock prices that is being caused by the low interest rate environment [and] the distortion in water utility stock prices has continued even after the effects of COVID-19 are considered.¹⁶⁸

Despite the OCA's general criticism that Ms. Bulkley is purportedly over-reliant on analyst expectations and historic instead of market-based data, the OCA's Main Brief makes clear that Mr. Rothschild also relied upon the expectations and forecasts of analysts and historical earned returns.¹⁶⁹ Once earnings growth rates are used (with data from multiple analysts), Mr. Rothschild's Constant Growth DCF result would substantially increase – even as those results remain unreliable due to the current market environment.¹⁷⁰

c. Application of Non-Constant Growth DCF Model

The OCA includes a discussion of Mr. Rothschild's Non-Constant Growth analysis in its Main Brief. Mr. Rothschild testified that he did not rely on this analysis, and therefore it should not be considered by the Commission.¹⁷¹

d. CAPM

As with its DCF argument, the OCA's Main Brief again summarizes Mr. Rothschild's CAPM methodology without addressing any of the flaws in his approach identified by Ms. Bulkley. While Mr. Rothschild only used the CAPM as a “check” on his DCF calculations, the

¹⁶⁸ PAWC St. 13-R, pp. 75-76.

¹⁶⁹ OCA St. 3, p. 39.

¹⁷⁰ PAWC St. 13-R, p. 79-80.

¹⁷¹ See OCA St. 3, p. 7; OCA St. 3SR, p. 11.

lack of usefulness of his calculation is reflected in the wide range of his ROE results (5.83% to 11.28%), with the lower end of the range clearly not providing a risk premium sufficient to compensate equity investors.¹⁷²

In her testimony, Ms. Bulkley highlighted several principal errors in Mr. Rothschild's CAPM analysis that the OCA Main Brief ignores:

- The use of a three-month Treasury bill yield on a single trading day in calculation of the CAPM risk-free rate, which is inappropriate in light of market volatility;
- The additional reliance on options data for a single trading day, with a comparatively short time period that is inappropriate in light of the period for which PAWC rates will be in effect (and academic literature described by Ms. Bulkley); and
- The calculation of a risk premium using options contracts and spot market data (again, on a single trading day).¹⁷³

Notably, in attempting to address Ms. Bulkley's criticisms of his use of shorter-term periods in his calculations despite the volatility in financial markets, OCA witness Rothschild concedes that he is not aware of academic support for his specific approach.¹⁷⁴ As Ms. Bulkley observes, the study that he does cite – which focused on 180-day periods for option-implied Betas – specifically stated that “[f]or other applications, such as cost of capital calculations, longer-horizon betas may be needed.”¹⁷⁵

As with his DCF analysis, making just two modifications to Mr. Rothschild's analysis to incorporate longer-term market data in light of market volatility leads to far more reasonable

¹⁷² PAWC M.B., p. 47.

¹⁷³ PAWC M.B., pp. 45-47; PAWC St. 13-R, pp. 82-101.

¹⁷⁴ OCA St. 3SR, p. 29 and 37.

¹⁷⁵ PAWC St. 13-R, p. 92.

results. Incorporating a 30-year Treasury bond yield in the estimate of a risk-free rate instead of three-month Treasury bills and use of two- and five-year Beta coefficients from established analysts instead of shorter-term implied Betas derived primarily from options contracts results leads to an ROE range of 10.97% to 12.46%. This result is more consistent with Ms. Bulkley's ROE recommendation of 10.8% than with Mr. Rothschild's recommendation of 8.0%.¹⁷⁶

e. Expected Earnings Approach

The OCA did not address PAWC's Expected Earnings approach in its Main Brief.¹⁷⁷

3. Analysis of PAWC's Cost of Equity

In this proceeding, the OCA's ROE witness has conceded that COVID-19 has "fundamentally changed capital markets,"¹⁷⁸ and in its Main Brief the OCA contends that "market conditions are unknown and therefore, immeasurable" as a result of the pandemic.¹⁷⁹ Despite the OCA's repeated arguments against a rate increase (and even for a reduction in rates) based on changes in economic data in the wake of the pandemic, the OCA takes the opposite view with respect to the cost of equity and urge the Commission to utilize its "traditional DCF approach".

The Commission has made clear how to proceed in such circumstances. As the Commission explained in *PPL 2012*, its preference for the DCF method of calculating ROEs is not ironclad; when there is evidence from other ROE models that the DCF-only results may understate a utility's current cost of equity capital, consideration should be given to those other methods. And that is exactly what PAWC witness Bulkley did here: after performing a

¹⁷⁶ PAWC St 13-R, p. 100.

¹⁷⁷ See PAWC M.B., pp. 47. The OCA did use the term "Expected Earnings" in its discussion of the DCF model, but that appears to be a reference to the use of earnings data in Mr. Rothschild's Non-Constant DCF analysis, which he did not rely on. See OCA M.B., p. 44.

¹⁷⁸ OCA St. 3, p. 14.

¹⁷⁹ OCA M.B., p. 49.

traditional DCF analysis and obtaining results that were lower than the average dividend yield for water and natural gas utilities over the last ten years, she gave additional weight to the CAPM model in her recommendation.¹⁸⁰

The OCA's general objections to Ms. Bulkley's methodology in its Main Brief should be dismissed. The ROE calculations performed by Ms. Bulkley reflect extensive use of market data.¹⁸¹ Where she incorporated historical data or analysts' expectations, OCA witness Rothschild did so as well, but often with less diversity of analysts and shorter timelines that fail to take into account effects of recent market volatility due to the COVID-19 pandemic.¹⁸²

In the event the Commission does not approve the Settlement, the Commission should reject the OCA's inadequate proposed ROE and adopt the ROE recommendation of 10.8 percent consistent with Ms. Bulkley's testimony.

4. PAWC's Proposed Multi-Year Rate Plan

The OCA has ignored the Settlement term committing PAWC to withdraw its proposed MYRP if the Settlement is approved. In light of that approach, the OCA summarizes Mr. Rothschild's assertion that the MYRP could reduce the cost of equity, and cites to his recommendation that the Commission implement an "earnings sharing mechanism" if the MYRP is approved.¹⁸³

As Ms. Bulkley explained, Mr. Rothschild's recommendation to consider the MYRP in selecting a cost of equity lower than that proposed by the Company is inappropriate. Mr.

¹⁸⁰ PAWC St. 13, pp. 5-6.

¹⁸¹ *See, e.g.*, PAWC St. 3, pp. 49 (using proxy group dividend yields in DCF model); p. 56 (current treasury yields in CAPM analysis).

¹⁸² *Compare, e.g.*, PAWC St. 3, p. 51 (incorporating long-term growth rates from Value Line, Zacks and Yahoo Finance/Thomson Reuters in DCF model) with OCA St. 3, p. 40 (Value Line and Zacks data for DCF model) and PAWC St. 13-R, p. 94 (describing use of average Beta coefficients derived from five and ten-year data) with OCA St. 3, p. 51 (giving significant weight to six-month Beta data).

¹⁸³ OCA M.B., p. 50.

Rothschild made no attempt to compare the regulatory mechanisms of the proxy group used to develop his ROE to determine if a company with an MYRP has greater (or lower) regulatory risk. Because he did not conduct any such analysis, there is no basis to conclude that PAWC has less relative risk.¹⁸⁴

Similarly, his recommendation that the Commission implement an “earnings share mechanism” in the event it approves an MYRP should be summarily rejected.¹⁸⁵ Mr. Rothschild provided no details whatsoever with regard to his proposal, nor does the OCA provide any legal basis for such a mechanism under Act 58’s authorization of multi-year rate plans or the Commission’s Act 58 Implementation Order.¹⁸⁶

5. Fair Market Value Legislation’s Impact on Cost of Equity

The OCA also argues that the ability of PAWC to utilize fair market valuation when acquiring water and wastewater systems under Section 1329 of the Code supports the OCA’s recommended cost of equity.¹⁸⁷ As with its contention regarding possible effects of an MYRP on PAWC’s cost of equity, Mr. Rothschild made no attempt to determine whether any of the water utilities in his proxy group are also authorized to use fair market valuation in acquisitions.¹⁸⁸ The analysis of the appropriate ROE is conducted using market data for a proxy group of companies as the basis for investors’ expectations. In order to determine that PAWC’s use of fair market value in acquisitions was risk-mitigating, it would be necessary to demonstrate that the use of fair market value was not readily available to the proxy companies. The OCA

¹⁸⁴ See PAWC St. 13, p. 108.

¹⁸⁵ See *id.*

¹⁸⁶ See generally *Implementation of Act 58 of 2018 Alternative Ratemaking for Utils.*, Docket No. M-2018-3003269 (Implementation Order entered Apr. 25, 2019).

¹⁸⁷ OCA M.B., p. 51.

¹⁸⁸ PAWC St. 13-R, pp. 108-09.

provided no such demonstration. Therefore, there is no basis to conclude that a lower ROE is appropriate because of the implementation of fair value legislation.

The OCA's reference to generic statements regarding fair value legislation and the Commission's general statement regarding the ability of Section 1329 to mitigate risk are also, at best, misplaced; as the Commission made clear in the same decision cited by the OCA, there is no certainty that the Commission will accept a utility's proposed valuation.¹⁸⁹ As such, there is no basis to conclude that PAWC has less relative risk due to the existence of Section 1329.

D. Business Risks And Management Performance

In its Main Brief, the Company highlighted the many risks and challenges that the Company faces in providing essential service to its customers, including risks associated with capital expenditure program and environmental and water quality regulations, as well as the continuing need to rehabilitate, replace, and enhance aging infrastructure. The Company presented substantial evidence demonstrating that, in the face of the foregoing risks and challenges, it exhibited excellent management performance in a variety of areas critically important to assuring safe, reliable and reasonable service, including source water protection and monitoring, extensive system additions and upgrades, and delivering a variety of public benefits through acquisitions. As a result, Ms. Bulkley determined that PAWC's superior management performance should be appropriately recognized by the Commission pursuant to Section 523 of the Code consistent with the 25 basis points proposed by Mr. Nevirauskas.¹⁹⁰

In contrast to Ms. Bulkley's consideration of PAWC's operational risks and management performance, the OCA simply restates its general objections to a rate increase during the

¹⁸⁹ See *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Pub. Util. Code for Approval of its Acquisition of the Wastewater Sys. Assets of Limerick Twp.*, Docket No. A-2017-2605434 (Order entered Nov. 19, 2017), pp. 35-36.

¹⁹⁰ PAWC M.B., pp. 48-49.

COVID-19 pandemic and Ms. Bulkley's ROE analysis,¹⁹¹ which have been previously addressed. As noted in the Company's Main Brief, the OCA's additional suggestion that Pennsylvania was not experiencing a global pandemic at the time the Commission approved a 25 point basis request for another water utility is also inapposite, as that recognition was also approved during a major economic crisis (the 2008 Great Recession).¹⁹²

E. Other Parties' Equity Cost Rate Recommendations And Principal Areas Of Dispute

Following the Settlement, the OCA is the only party proposing an alternative capital structure and ROE. The Company has addressed OCA's contentions in both its Main Brief and above, and the Commission should reject the OCA's inadequate proposed ROE.

X. REGIONALIZATION AND CONSOLIDATION SURCHARGE

The Settlement commits PAWC to withdraw its proposed RCS if the Settlement is approved. If the Commission rejects or modifies the Settlement, PAWC requests that the Commission approve a RCS to permit PAWC to recover, between base rate cases, shortfalls due to the acquisition of municipal water or wastewater systems pursuant to Section 1329 of the Code.¹⁹³ PAWC's proposal would further the Commission's policy goals of promoting the regionalization and consolidation of water and wastewater systems to foster the economic and environmental benefits that flow from regionalization and consolidation.¹⁹⁴ In addition, this proposal would further the General Assembly's policy goal of enabling municipalities to monetize their assets; willing sellers of municipal utility systems would be better able to find

¹⁹¹ OCA M.B., p. 52.

¹⁹² PAWC St. 13-R, p. 110.

¹⁹³ PAWC St. 1, p. 6.

¹⁹⁴ See 52 Pa. Code § 69.721(a).

willing buyers.¹⁹⁵ As the administrative agency charged with the implementation of Section 1329, the Commission should promote ways of making that statute more effective.

OSBA's Main Brief (p. 13) contends that the RCS is unnecessary because the Code already gives PAWC ways to address the problem of regulatory lag (*e.g.*, by establishing a distribution system improvement charge, by using a fully projected future test year, and by using alternative rate-making mechanisms). These existing provisions, however, do not eliminate the problem of regulatory lag for Section 1329 acquisitions. Earnings still degrade between rate cases as a result of Section 1329 acquisitions, and the Commission should address the problem.¹⁹⁶

The OCA also opposes the RCS. The OCA Main Brief greatly exaggerates the potential impact of the RCS on ratepayers. The OCA notes that, as a consumer safeguard, PAWC proposes a cap on the RCS of 5% of the revenues from existing water and wastewater customers (excluding public fire protection revenues and other surcharge revenues).¹⁹⁷ The OCA calculates that the cap would be \$38,850,000 annually.¹⁹⁸ There is no evidence, however, that the RCS would come close to this safeguard cap. The RCS would be calculated based upon actual closings of Section 1329 acquisitions between base rate cases. It should not be assumed that the full 5% cap amount would be billed during the entirety of the period between base rate cases. The RCS would gradually increase as Section 1329 acquisitions actually close and then would be reset to 0% in the next base rate case (similar to the DSIC safeguards).

¹⁹⁵ PAWC St. 8, p. 25.

¹⁹⁶ *Id.*, p. 21.

¹⁹⁷ OCA M.B. p. 53.

¹⁹⁸ *Id.*, p. 54

Nor should the Commission be misled by the OCA's argument that the RCS does not meet the criteria for creating a surcharge.¹⁹⁹ The Commonwealth Court upheld the Commission's decision allowing Newtown Artesian Water Company to impose a Purchased Water Adjustment Surcharge.²⁰⁰ The Commonwealth Court held that surcharge recovery is available under Section 1307(a) of the Code where (1) expressly authorized by the General Assembly, or (2) an expense is easily identifiable and beyond the utility's control. Here, surcharge recovery is explicitly permitted by Section 1330(b)(2), which states: "An alternative rate mechanism established under this section may include rates under section 1307 (relating to sliding scale of rates; adjustments)"²⁰¹ Moreover, the timing of a Section 1329 acquisition is often beyond the control of PAWC because it is dictated by the selling municipality, and the expenses are easily identifiable because ratemaking rate base is finally set by the Commission in the application proceeding.²⁰²

Adopting the RCS would reaffirm to investors that Pennsylvania has a regulatory environment that is favorable for public utility investors. By allowing PAWC to recover a portion of its investment in acquisitions promptly, the Commission would reduce the financial risk to investors. This would send a signal to the investment community that Pennsylvania utilities are a good place to invest which, in turn, would allow the purchase of more municipal systems pursuant to Section 1329.²⁰³

The OCA argues that the Commission should not grant PAWC a rate increase during a pandemic, when many ratepayers are experiencing financial challenges.²⁰⁴ At the same time,

¹⁹⁹ OCA M.B., pp. 54-57.

²⁰⁰ *Popowsky v. Pa. P.U.C.*, 13 A.3d 583, 591 (Pa. Cmwlth. 2011).

²⁰¹ 66 Pa.C.S. § 1330(b)(2).

²⁰² PAWC St. 8-R, p. 14.

²⁰³ *Id.*, p. 18.

²⁰⁴ OCA M.B., p. 4.

however, some municipalities are experiencing financial challenges, causing them to consider selling their utility systems. As a result, PAWC may have many opportunities in the near term to acquire systems pursuant to Section 1329.²⁰⁵ Adopting the RCS at this time would assist PAWC in regionalization and consolidation of water and wastewater systems, which clearly benefits the public.²⁰⁶

XI. PENSION/OPEB TRACKER

The Company's position regarding its proposed pension/OPEB tracker is set forth in its Main Brief (pp. 50-51). If the Settlement is approved, the pension/OPEB tracker is withdrawn. If the Settlement is not approved, the proposed pension/OPEB tracker should be approved for the reasons set forth in the Company's Main Brief and its proposed Findings of Fact (Appendix A to PAWC's Main Brief, pp. 31-32).

XII. RATE STRUCTURE AND RATE DESIGN

A. Introduction

In its Main Brief (pp. 52-57), PAWC fully described the revenue allocation and rate design agreed to by the Company, I&E, AK Steel and PAWLUG and explained why the Settlement Rates are in the public interest. Additionally, PAWC discussed rate design issues that remain contested by parties that have not joined the Settlement and explained the Company's position on each. Unfortunately, the OCA's Main Brief (pp. 61-66 and 76-83) repeats a number of Mr. Rubin's recommendations that PAWC accepted in its rebuttal case or that have been reflected in the Settlement Rates. In Sections XII.B through XII.F below, PAWC identifies the

²⁰⁵ PAWC St. 8-R, p. 14.

²⁰⁶ By the estimate of OCA's own witness, Mr. Rubin, there are approximately 600 to 700 municipal water systems and 800 to 900 municipal wastewater systems in the Commonwealth. PAWC Exhibit BJG-2R.

issues that remain in dispute and addresses the non-settling parties' arguments, to the extent they have not already been addressed in the Company's Main Brief.

B. Cost Of Service Study

In its Main Brief (pp. 52-53), PAWC provided an overview of the cost of service evidence presented during the course of this proceeding. As noted therein, PAWC's cost of service studies for its water and sanitary sewer system ("SSS") operations have not been contested. The OCA disagrees with the way PAWC witness, Constance E. Heppenstall, allocated stormwater costs to rate classes in the cost of service studies she prepared for the Company's combined sewer system ("CSS") operations in Scranton, McKeesport and Kane, but OCA witness Rubin has not recommended any revisions to those costs of service studies.²⁰⁷ Mr. Rubin's rate design proposals for PAWC's CSS operations and recommendation that the Company propose a separate stormwater rate in its next base rate case are discussed below.

C. Non-Settling Party Rate Design Proposals

Water Customer Charges. CEO opposes any increase in the Company's fixed monthly customer charge for residential water customers.²⁰⁸ The Settlement Rates reflect the need to recover the customer component of total cost of service in the service charge, while recognizing that increases in the service charges can impact low-usage customers. Accordingly, the Settlement Rates provide for an increase in PAWC's residential water service charge (\$17.00 per month (2021) and \$17.50 per month (2022) for a 5/8-inch meter), but in a lesser amount than the \$18.00 (RY1) and \$18.50 (RY2) service charges the Company originally proposed. The proposed customer charges are fully supported by the customer-related costs identified in Ms.

²⁰⁷ See OCA M.B., pp. 60-61.

²⁰⁸ CEO M.B., p. 6.

Heppenstall's cost of service study (\$17.06 to \$21.05 per month (RY1) and \$17.50 to \$21.52 per month (RY2) for a 5/8-inch meter).²⁰⁹

CEO has offered no cost of service basis for its recommendation. Instead, CEO argues that raising the customer charge will provide a disincentive for water conservation. However, as Ms. Heppenstall explained, given the level of PAWC's consumption charges, customers will still have the ability to reduce their overall bill with only basic conservation measures.²¹⁰ In fact, as Ms. Heppenstall demonstrated, the portion of the average residential water bill related to the customer charge will be declining under proposed rates as follows:²¹¹

	<u>Monthly Bill</u>	<u>Customer Charge</u>	<u>Percentage of Bill</u>
Present Rates	\$57.85	\$16.25	28.1%
RY1	\$65.91	\$18.00	27.3%
RY2	\$69.73	\$18.50	26.5%

* Present rates include 5.65% DSIC and -6.79% TCJA

Under the Settlement Rates, the percentage drops from 28.1% to 27.5% and 27.9% in 2021 and 2022, respectively.²¹²

Water Rate Zone 5 (Steelton). In its rebuttal case, PAWC accepted Mr. Rubin's recommendation (OCA Main Brief, p. 61) to apply the same customer charge to residential customers with meter sizes of 1-1/2 inches or smaller in Rate Zone 5,²¹³ and the Settlement Rates reflect the same customer charge structure for Rate Zone 1 and Rate Zone 5 as Mr. Rubin proposed.²¹⁴ The Settlement Rates do not reflect Mr. Rubin's recommendation that PAWC

²⁰⁹ PAWC M.B., p. 54; *see also* PAWC St. 12-R, pp. 5-7.

²¹⁰ PAWC St. 12-R, pp. 6-7.

²¹¹ *Id.*, p. 7; *see also* PAWC Exh. CEH-2R, Schedule 11.

²¹² *See* Joint Petition, Appendix G.

²¹³ PAWC St. 4-R, p. 25.

²¹⁴ *See* Joint Petition, Appendix A, Tariff Water-PA P.U.C. No. 5, Revised Pages 16 and 16.7.

maintain the 5/8-inch customer charge and reduce the minimum usage allowance from 1,700 to 1,000 gallons per month.²¹⁵ As explained by Ms. Heppenstall, the OCA's proposal would have a disproportionate impact on low usage customers in the residential class.²¹⁶

Wastewater Rate Zone 3 (Scranton). Both the OCA and OSBA propose a higher overall increase in Scranton rates and a corresponding reduction in the allocation of wastewater revenue requirement to water customers. Specifically, Mr. Rubin and Mr. Kalcic recommend an overall increase of 20% and 41.5%, respectively, over RY1 and RY2.²¹⁷ The Settlement Rates reflect a 33.5% overall increase in Scranton rates phased in over two years,²¹⁸ which is higher than the OCA and OSBA recommendations if their proposed Rate Zone 3 increases are scaled back proportionately to the Settlement revenue requirement – 14.8% (OCA) and 30.7% (OSBA).

Wastewater Zone 4 (Koppel). Mr. Rubin proposed a 20% reduction to the Rate Zone 4 customer charge with a 50% increase to the volumetric charge to avoid greater than 33% bill increases for most residential customers.²¹⁹ For the Step 1 base rate increase (2021), which corresponds to the period of Mr. Rubin's proposed rate design, the Settlement Rates would produce a 33.6% overall increase for Koppel wastewater customers consistent with the OCA's proposal.²²⁰

Wastewater Rate Zone 6 (McKeesport). The OCA opposes PAWC's original proposal to merge Port Vue customer rates in Rate Zone 6 with Rate Zone 1 and proposes that Port Vue customers receive a lesser increase than PAWC proposed to ensure that no customer bill would

²¹⁵ OCA M.B., p. 62.

²¹⁶ See PAWC St. 12-R, p. 12.

²¹⁷ OCA M.B., pp. 64-65; OSBA M.B., pp. 18-19.

²¹⁸ See Joint Petition, Appendix B, Tariff Wastewater PA P.U.C. No. 16 ("Wastewater Tariff"), Revised Page 11.4 and Appendix H.

²¹⁹ OCA M.B., p. 65.

²²⁰ See Joint Petition, Appendix B, Revised Page 11.5 and Appendix H.

increase by more than 46%.²²¹ The Settlement Rates would not equalize the Port Vue rates with the comparable Rate Zone 1 rates and would produce a 38% increase in the typical residential customer bill, which is comparable to what the OCA proposed.²²²

Allocation of Wastewater and Steelton Water Revenue Requirements to Water

Service Classes. In its rebuttal case, the Company noted that Mr. Kalcic's alternative methodology for allocation of the wastewater and Steelton water revenue shortfall is reasonable.²²³ The Settlement Rates employ his proposed methodology described in the OSBA Main Brief (pp. 20-22) instead of the individual class cost of service study results as PAWC originally proposed.

Scaleback. Subject to specific differences discussed below, the non-settling parties are in general agreement with the Company about the scale back that should occur if the Commission grants less than PAWC's requested revenue increase. The OCA contends (Main Brief, pp. 63 and 66-67) that the Company's proposed customer charges should be reduced in proportion to the final revenue increase approved in this case. PAWC would scale back the volumetric charges to achieve the targeted revenue level for each rate class.²²⁴ The customer charges proposed under the Settlement Rates were scaled back but not proportionately to the 50% reduction in PAWC's original requested revenue increase provided the Settlement. As previously explained, the customer costs identified in Ms. Heppenstall cost of service study – which the OCA does not dispute – support customer charges higher than those reflected in the Settlement Rates. Reducing the proposed customer charges as Mr. Rubin recommends would move them further away from the indicated cost of service.

²²¹ OCA M.B., pp. 65-66.

²²² See Joint Petition, Appendix B, Revised Page 11.8 and Appendix H.

²²³ PAWC St. 12-R, p. 4.

²²⁴ See *id.*, pp. 14-15.

D. Allocation Of Wastewater Revenue Requirement To Water Operations

PAWC has proposed to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company's wastewater revenue requirement from its total water and wastewater customer base. As explained in PAWC's Main Brief (pp. 55), allocating \$29.3 million (Step 1) and \$21.5 million (Step 2) of wastewater revenue requirement – not the amounts of \$32.9 million (RY1) and \$35.2 million (RY2) PAWC originally proposed – as provided in the Settlement is in the public interest. In fact, the Settlement Rates would reduce the Section 1311 allocation below the amounts recommended in the OSBA Main Brief (p. 19).

The OCA disagrees with the use of Section 1311(c) in conjunction with Section 1329 acquisitions. Section 1329 allows a public utility to pay more than depreciated original cost for water or wastewater systems owned by a municipal corporation or authority and to include the purchase price (rather than net original cost) in rate base.²²⁵ The OCA contends that investors – not PAWC's water *or* wastewater customers – should bear the portion of PAWC's revenue requirement related to the PUC-approved rate base impact for the Company's acquisitions under Section 1329.²²⁶ As explained in PAWC's Main Brief (pp. 55-56), the OCA's position is contrary to law and would deprive shareholders of their constitutional right to a fair return on their investments.

E. Allocation Of Steelton Revenue Requirement To Other Water Operations

The OCA's argument that PAWC shareholders should absorb the portion of the Steelton revenue requirement that Mr. Rubin characterizes as the "Section 1329 premium"²²⁷ was fully addressed in Section XII.D. above and in the Company's Main Brief (pp. 56-57).

²²⁵ 66 Pa.C.S. § 1329(c); *see also* OCA St. 1, p. 52.

²²⁶ OCA M.B., pp. 68-75.

²²⁷ *Id.*, p. 76.

F. Separate Stormwater Rate

As explained in PAWC’s Main Brief (p. 57), under the Settlement, the Company agreed to propose potential recovery and rate methodology options for storm water costs for its CSS operations in its next rate case, including forms of separate stormwater rates. At this stage, PAWC and the OCA disagree on a single point: whether PAWC must propose specific stormwater rates that consider “impervious” area and other property characteristics as part of the filing in its next base rate filing.²²⁸ The OCA does not address and, therefore, is assumed not to contest, PAWC’s evidence of the issues and practical challenges related to implementation of a separate system of stormwater rates for CSSs compared to standalone municipal stormwater systems.²²⁹ PAWC submits that completion of the detailed study of potential allocation and recovery mechanisms outlined in the Settlement is an appropriate first step in the development of a system of stormwater rates for its CSS operations. The OCA has not furnished any valid reason why the Company’s stormwater proposal in its next rate case needs to contain a request for PUC approval of specific rates and charges.

XIII. RECOMMENDATIONS FOR ACTIONS RELATED TO THE COVID-19 EMERGENCY

The Company has taken a proactive responsive approach in responding to the impacts of COVID-19.²³⁰ CAUSE-PA argued in its Main Brief that the Company should be directed to take additional actions to respond to the impacts of COVID-19.²³¹ However, the Company has already addressed and resolved almost all of the issues related to the COVID-19 emergency

²²⁸ See *id.*, pp. 116-122.

²²⁹ See PAWC St. 3-R, pp. 6-8 (explaining that developing an entire set of rates based on billing determinants that would have to be created through data collection and analysis is a complex and time-consuming task); PAWC St. 4-R, pp. 26-27 (discussing the practical challenges the Company will face to identify the appropriate “stormwater contributors” and to collect stormwater fees from accounts that are not PAWC customers).

²³⁰ PAWC St. 1, p. 48.

²³¹ See CAUSE-PA M.B., pp. 28-31.

raised by CAUSE-PA. The voluntary actions undertaken by the Company, such as waiving good faith payment requirements, waiving reconnection fees, easing income certification requirements, increasing community outreach to communities in need, working with its new low-income advisory group to enhance low-income initiatives, and the additional low-income program enhancements described in Section XIV, *supra*, will provide substantial relief to customers impacted by the COVID-19 pandemic.²³²

Other issues raised by CAUSE-PA should be addressed in a different forum at a later time. For example, CAUSE-PA's recommendation that the Company consider whether it is appropriate to expand the grant amount offered under the Hardship Fund²³³ is an issue that the low-income advisory group would be well-suited to provide input on. In addition, the Company is addressing the best approach for resuming terminations in the context of PUC proceedings following the recent modification of the Commission's March 13, 2020 Emergency Order at Docket No. M-2020-3019244. The Commission's October 8, 2020 Order at Docket No. M-2020-3019244 on this topic explicitly recognized the dynamic nature of the pandemic, established consumer protections and a stakeholder process for addressing the emergency moratorium, and the Commission indicated that it would revisit the Order in the first quarter of

²³² See PAWC M.B., pp 58-59. See also CEO Stip. ¶ 2, Joint Petition ¶ 35 (the Company will waive the good faith payment requirement for PAWC's H2O Help to Others Hardship Fund for one year from the date of a final order in these proceedings); CEO Stip. ¶ 1, Joint Petition ¶ 34 (the Company will waive all reconnection fees for customers at or below 200% of the FPL for one year from the date of the final order in these proceedings); CEO Stip. ¶ 3, Joint Petition ¶ 36 (the Company will permit customers to self-certify income for purposes of qualifying for PAWC's H2O Help to Others Hardship Fund for a period of time); CEO Stip. ¶ 4, Joint Petition ¶ 37 (the Company will expand community outreach to communities in need with PAWC's service territories, and, through the low-income advisory group, seek input from interested parties and stakeholders to target areas of significant need); Joint Petition ¶ 43 (the Company will work to identify new sources of funding for the Hardship Fund)

²³³ See CAUSE-PA M.B., p. 30.

2021.²³⁴ There is no reason for the Commission to require PAWC to independently further address COVID-19 issues in this proceeding.

The Commission should also reject CAUSE-PA's recommendations that (i) the Company should not receive any rate increase;²³⁵ (ii) the Company should be required to conduct a formal analysis of the impact of COVID-19;²³⁶ and (iii) the Commission should adopt the emergency assistance program proposed by OCA witness Colton.²³⁷ CAUSE-PA's assertion that the Company should not receive any rate increase should be rejected for the reasons set forth in Section III, *infra*. The Commission should also reject CAUSE-PA's recommendation that the Company be required to conduct a formal analysis of the impact of COVID-19. As explained in the Company's Main Brief, the merits of such a study are questionable, and it would be a time-consuming, complicated, and costly undertaking.²³⁸

XIV. LOW-INCOME CUSTOMER ASSISTANCE

A. H2O Discount Program Design

The Company's tariffs currently provide for an 85% discount on the service charge for water customers at or below 150% of the FPL and a 20% discount on the total bill for wastewater customers at or below 150% of the FPL.²³⁹ The Company proposed granting low-income customers an additional 10% discount off the volumetric portion of their water bill and increasing the 20% total wastewater bill discount to 30%.²⁴⁰ CEO argued that if the Company

²³⁴ *Pub. Util. Serv. Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Oct. 8, 2020).

²³⁵ CAUSE-PA M.B., p. 28.

²³⁶ *Id.*

²³⁷ *Id.*, p. 31. Mr. Colton does not propose the adoption of an "emergency assistance program." If CAUSE-PA is referring to OCA's proposals regarding Low-Income Customer Assistance programs, the Company addresses those proposals in Section XIV, *supra*.

²³⁸ PAWC M.B., p. 59. *See also* PAWC St. 1, p. 82-83.

²³⁹ PAWC St. 4, p. 46.

²⁴⁰ PAWC M.B., p. 60. *See also* PAWC St. 4, pp. 46-47. The Company disagrees with CAUSE-PA's characterization of the effectiveness of the PAWC low-income programs in CAUSE-PA's Proposed Finding of Fact, ¶ 28.

receives a rate increase, the 85% water service charge discount should be increased to 90% and the Company's proposed 10% discount on water volume should be increased to 15%.²⁴¹ CEO has not provided any support for this recommendation or explained why the Company's current proposal is unreasonable. Therefore, the Commission should reject CEO's proposal and find that the Company's proposed discounts are reasonable.

CAUSE-PA and the OCA both argued PAWC should be required to adopt an arrearage management program.²⁴² The Company has already agreed that, within six months of a final order in this proceeding, it will present an Arrearage Management Plan to the Commission for review and approval, designed through a multi-party stakeholder consultative process with the participation of BCS.²⁴³ Therefore, CAUSE-PA's and OCA's recommendations should be rejected.

CAUSE-PA and the OCA also argued that PAWC should be required to implement tiered discounts.²⁴⁴ The Commission should reject this proposal. As noted in the Company's Main Brief, the Company is currently unable to implement a tiered discount program.²⁴⁵ Moreover, the affordability analyses on which CAUSE-PA's and OCA's recommendations are premised are flawed.²⁴⁶ CAUSE-PA and the OCA grossly over-estimate the number of low-income customers in the Company's service territory and make no attempt to identify the actual number of customers in the different FPL categories to which their analyses actually apply, leaving their recommendations without accurate support.

²⁴¹ CEO M.B., p. 7.

²⁴² CAUSE-PA M.B., pp. 42-45; OCA M.B., pp. 84, 87-88.

²⁴³ PAWC M.B., p. 60. *See also* CEO Stip. ¶ 11.

²⁴⁴ CAUSE-PA M.B., p. 40; OCA M.B., pp. 87.

²⁴⁵ PAWC M.B., p. 61.

²⁴⁶ *See* PAWC St. 1-R, pp. 77-79.

CAUSE-PA also asserted that PAWC should be required to implement a comprehensive service line repair program as part of a Universal Service Plan.²⁴⁷ As explained by PAWC witness Dean, implementing a low-income conservation and line repair program within the H2O discount program would be a challenge because many low-income customers would be tenants and the person or company who is the owner of the service line would not qualify for the low-income discount program.²⁴⁸ Moreover, as noted by Company witness Nevirauskas, CAUSE-PA over-estimated low-income residential water usage in its affordability analyses.²⁴⁹ CAUSE-PA has failed to demonstrate that there is an acute need for a low-income service line repair program. Therefore, the Commission should deny CAUSE-PA's recommendation.

B. Hardship Fund

The Company already agreed to CEO's and CAUSE-PA's recommendation²⁵⁰ that PAWC increase its annual contribution to the Hardship Fund from \$400,000 to \$500,000.²⁵¹

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

The OCA and CAUSE-PA each made several recommendations related to the Company's low-income customer outreach, data collection, and reporting efforts that the Company has already agreed to. As noted in the Company's Main Brief, it will (1) expand community outreach to communities in need within its service territory; (2) enhance its training materials and call scripts; (3) establish a low-income advisory group; and (4) develop a process for program data collection and reporting to better count low-income customers.²⁵² The

²⁴⁷ CAUSE-PA M.B., p. 48,

²⁴⁸ PAWC St. 17-R, p. 25.

²⁴⁹ PAW St. 1-R, p. 79.

²⁵⁰ CEO M.B., p. 8; CAUSE-PA M.B., p. 49.

²⁵¹ PAWC M.B., p. 61. *See also* Joint Petition ¶38; CEO Stip. ¶ 5.

²⁵² PAWC M.B., pp. 62-63. *See also* Joint Petition ¶¶ 37, 41, 43, 48; CEO Stip. ¶¶ 7, 9, 10; PAWC St. 17-R, pp. 3-9. The Company notes that CAUSE-PA's Proposed Finding of Fact, ¶ 42 is incorrect in stating that PAWC has not set forth any plans to improve or expand outreach to customers who may be eligible for assistance.

Company will also seek more donations to its Hardship Fund, including through increased outreach and the efforts of the low-income advisory group.²⁵³ However, the Commission should reject OCA’s recommendation that the Company be required to budget \$50,000 to hire a consultant to develop a “grass-roots, boots-on the ground” outreach plan for the reasons discussed in the Company’s Main Brief and in the testimony of PAWC witness Dean.²⁵⁴

D. Comprehensive Universal Service Plan

CAUSE-PA argues that the Company should be required to file a Petition with the Commission for review and approval of a Universal Service Plan (“USP”) within one year of the effective date of a rate in this proceeding, and then for approval of a revised USP every five years thereafter.²⁵⁵ Contrary to CAUSE-PA’s assertions, the Company’s Commission-approved low-income programs that comprise PAWC’s customer assistance program portfolio are already clear, transparent, and always subject to review by the Commission. Moreover, as explained in the Company’s Main Brief, utility USPs typically evolve over time.²⁵⁶ The most prudent resolution of this issue would be for PAWC and stakeholders to further refine the Company’s low-income programs through the efforts of the low-income advisory group and to initiate a USP proceeding at a later time, if necessary. As part of the Settlement, the Company agreed to request that the Commission to initiate a proceeding to determine whether the “CAP Policy Statement” should be extended to regulated water and wastewater utilities.²⁵⁷

E. Winter Shut-Off Moratorium

CAUSE-PA asserted that PAWC should (1) be directed to track low-income customers who are protected from termination as a result of the winter moratorium and (2) extend the

²⁵³ Joint Petition ¶ 42.

²⁵⁴ See PAWC M.B., p. 62; PAWC St. 17-R, pp. 6-11.

²⁵⁵ CAUSE-PA M.B., pp. 62-63.

²⁵⁶ PAWC M.B., p. 63. See also PAWC St. 14-R, p. 33.

²⁵⁷ PAWC M.B., pp. 63-64. See also Joint Petition ¶ 44.

protection from termination to all of the Company's water and wastewater customers with household incomes at or below 250% of the FPL.²⁵⁸ The Company agreed to track low-income customers protected from winter moratorium termination as provided for under 52 Pa. Code §§ 56.100(a) and 56.251.²⁵⁹ However, as explained in the Company's Main Brief, the Commission's rules and regulations prescribe that the winter moratorium is only applicable to water customers using water for heating.²⁶⁰ CAUSE-PA has failed to adequately support its recommendation to expand the winter moratorium to all water and wastewater customers.

XV. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES

A. Customer Performance Service Standards

The OCA incorrectly asserts that PAWC does not have specific internal standards for essential performance areas²⁶¹ and recommends that the Company be required to comply with minimum performance standards for specific aspects of customer service including call center performance, leaks, main breaks, kept field appointments and responses to complaints.²⁶² The absurdity of OCA's claim that PAWC lacks any internal standards is underscored by the fact that almost half of the performance standards recommended by the OCA are based upon the Company's current performance levels or Company internal objectives.²⁶³

The Company provides adequate, efficient, safe, and reasonable service in accordance with 66 Pa. C.S. § 1501. The OCA cites to *Pa. P.U.C. v. Pennsylvania Gas & Water Co.*, 61 Pa.PUC 409, 74 PUR4th 238 (1986) ("*PG&W*") in support of imposing performance standards on the Company. The OCA omits, however, that in *PG&W*, Pennsylvania Gas and Water

²⁵⁸ CAUSE-PA M.B., pp. 64-65.

²⁵⁹ PAWC M.B., p. 64. *See also* Joint Petition ¶ 45.

²⁶⁰ PAWC M.B., p. 64.

²⁶¹ OCA M.B., p. 91.

²⁶² OCA M.B., pp. 91-92.

²⁶³ *See* OCA St. 5SR, p. 6.

Company (“Pa. Gas & Water”) was experiencing a multitude of serious service issues and the Company determined that Pa. Gas & Water “failed to maintain the kind of water quality that its customers deserve” and that “PG &W has seriously failed to provide adequate, efficient, safe, and reasonable service in accordance with its statutory duty...”²⁶⁴ There are no allegations that the Company has failed or is failing to comply with its statutory duties. As noted above, several of OCA’s proposed performance standards are to simply require the Company to comply with its current performance.²⁶⁵ There is no evidence that if the Commission failed to impose OCA’s recommended performance standards, including those related to response time to leaks, keeping customer appointments, main breaks, keeping field appoints, and resolution of customer inquiries, there would be any degradation in PAWC service. The OCA failed to explain why, given the Company’s exemplary performance, the Commission should impose such arbitrary standards.²⁶⁶

B. Call Centers

OCA’s recommended performance standards for call centers should be rejected for the reasons identified in the Company’s Main Brief. The Commission should also reject OCA’s argument that PAWC should be required to conduct regular audits of its third-party operated call centers.²⁶⁷

As explained the Company’s Main Brief, employees at the third-party operated call centers undergo the same training as employees at the AWWSC operated call centers and performance at the third-party operated call centers are closely monitored on a daily basis. In addition, the OCA fails to acknowledge the key differences in the Company’s call center

²⁶⁴ *Pa. P.U.C. v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409, 74 PUR4th 238 (1986).

²⁶⁵ *See* OCA St. 5SR, p. 6.

²⁶⁶ *See* PAWC M.B., p. 65.

²⁶⁷ *See id.*, pp. 66-67.

operations and performance metrics and those of the electric and gas utilities the OCA relies upon for comparison purposes.²⁶⁸ Winter weather generally triggers high call volumes at the CSC's call centers, which can lead to monthly variances in call center performance, as noted by OCA.²⁶⁹ However, the use of four call centers is meant to mitigate such monthly swings in call volumes to the maximum extent possible, while still maintaining affordable service. The call centers are appropriately staffed to balance customer needs and costs. While performance may be impacted by severe winter weather events as call volumes greatly increase, the use of four call centers and an interactive voice recognition ("IVR") system, through which customers can request a call-back, mitigate such impacts and allows the Company to manage its call centers efficiently.²⁷⁰

C. Customer Complaints

The Company agrees to provide OCA with the requested complaint logs.²⁷¹ However, OCA's recommendation that the Company be required to submit a quarterly analysis to BCS should be rejected.²⁷² As explained by the Company in its Main Brief, the Company already regularly submits information to BCS, which monitors trends in customer complaints and communicates directly with utilities.²⁷³ As explained by Company witness Dean, PAWC is experiencing a downward trend in customer complaints.²⁷⁴ The OCA recognized in its Main Brief that the Company already complies with BCS requirements, that if BCS reports indicate

²⁶⁸ For example, although a customer that chooses to receive a call-back through the CSC's IVR system is technically considered "abandoned," the Company disagrees that this is an indicator of poor customer service. *See* PAWC St. 18-R, pp. 7-8. As further detailed in the Company's Main Brief, PAWC disagrees with OCA's characterization of the Company's call center performance in OCA's Proposed Finding of Fact, ¶¶469-70.

²⁶⁹ *See* PAWC M.B., pp. 90, 97.

²⁷⁰ *See id.*, p. 66. *See also* PAWC St. 18-R, pp. 4-11, 13-16; Tr. 800:22-803:6, 805:2-20.

²⁷¹ *See* OCA M.B., pp. 100-01.

²⁷² *See id.*, p. 100.

²⁷³ *See* PAWC M.B., p. 67. *See also* OCA St. 17-R, pp. 11-12.

²⁷⁴ *Id.*

that further action is necessary, it will alert a utility, and that PAWC's customer complaint rate is improving in line with the Company's internal target.²⁷⁵ The OCA has failed to explain why the Company's current actions to improve customer complaints and ongoing interactions with BCS are insufficient. Therefore, the Company should not be required to submit an additional quarterly analysis to BCS.

D. Customer Satisfaction Surveys

The OCA argued that PAWC should be required to develop customer satisfaction surveys consistent with those approved by BCS for other electric and gas utilities.²⁷⁶ However, as explained in the Company's Main Brief, electric and gas utilities are mandated to utilize customer satisfaction surveys by industry specific statutes, namely the Customer Choice and Competition Act of 1996 for electricity utilities, and the Natural Gas Choice and Competition Act of 1999 for natural gas utilities. There is no comparable statutory requirement for water and wastewater utilities, and the OCA has not stated a basis to direct the Company to develop or implement such surveys. As such, OCA's recommendation should be rejected.²⁷⁷

E. Training On Termination Of Service

The OCA argues that the Company should revise its training documents to include training personnel to detect conditions that would result in danger or harm to those at residence if water service is terminated.²⁷⁸ This recommendation should be denied for the reasons set forth in the Company's Main Brief.²⁷⁹

²⁷⁵ OCA M.B., pp. 99-100.

²⁷⁶ *Id.*, pp. 101-02.

²⁷⁷ *See* PAWC M.B., pp. 67-68. *See also* PAWC St. 17-R, pp. 12-13.

²⁷⁸ OCA M.B., pp. 102-03.

²⁷⁹ PAWC M.B., pp. 68-69.

F. Pressure Surveys And Pressures

The Commission should deny OCA's assertion that if PAWC elects to provide higher than 125 p.s.i.g. static pressure to some customers in order to serve other customers, the Company should either (1) provide a pressure reducer protecting the customer's service line, or (2) provide an insurance policy covering repair or replacement of the service line.²⁸⁰ In addition to the arguments raised in the Company's Main Brief,²⁸¹ Company witness Aiton explained the OCA is attempting to solve a problem that does not exist. The operating pressure for new copper service lines installed by the Company is over 400 psi with a bursting pressure rating of over 1000 psi. Service lines with pressures over 125 psi are rarely not at risk.²⁸²

G. Main Extensions

The OCA argues that the Company should be directed to construct main extensions for customers in Washington, PA.²⁸³ These arguments should be rejected for the reasons set forth in the Company's Main Brief and in the testimony of Company witness Aiton.²⁸⁴ The Company should not be directed to construct main extensions to serve individuals not located within the Company's service territory, and for those within the Company's service territory, the OCA failed to demonstrate how the anticipated costs to serve such a limited number of customers are reasonable pursuant to Tariff Rule 27.1. OCA's statements that there *may* be additional customers or that additional sources of funding *could* be available to the Company (i.e. PENNVEST or other third party funding sources) are not a reasonable basis to direct the Company to construct the requested main extensions. If circumstances change in the future, the Company will re-evaluate this request in light of any new facts and its Tariff.

²⁸⁰ OCA M.B., p. 103.

²⁸¹ See PAWC M.B., p. 69.

²⁸² Tr., 639:3-639:25.

²⁸³ OCA M.B., pp. 103-08.

²⁸⁴ See PAWC M.B., pp. 69-70; PAWC St. 3-R, pp. 12-15; Tr. 640:1-641:9.

H. Sewage Backups

The Company's Long Term Control Plans ("LTCPs") are implemented in accordance with applicable regulations. The Company certainly tries to minimize all sewage backups, but the Commission should deny OCA's argument that the Company should "make sure" the implementation of LTCPs do not cause sewage backups. The Company will provide information to customers that have basements connected to combined sewers on options on eliminating sewage backups.

I. Tenant Issues And Protections

All issues involving tenant issues and protections have been agreed to.²⁸⁵

J. Language Access

All issues involving language access have been agreed to.²⁸⁶

K. Protection For Victims Of Domestic Violence

All issues involving protection for victims of domestic violence have been agreed to.²⁸⁷

XVI. TARIFF CHANGES

A. Limitation Of Liability

The OCA opposes PAWC's proposed changes to the limitation of liability provisions in its tariff, in their entirety,²⁸⁸ without bothering to compare those provisions to PAWC's existing tariff.²⁸⁹ Rule 15.1 of PAWC's existing water tariff limits the Company's liability for "any negligent act of omission or commission by the Company" without qualification. Additionally, Rule 15.1 of PAWC's existing water tariff limits the Company's liability "in any action" where

²⁸⁵ See PAWC M.B., p. 71; CAUSE-PA M.B., pp. 66-67.

²⁸⁶ See PAWC M.B., pp. 71-72; CAUSE-PA M.B., pp. 67-68.

²⁸⁷ See PAWC M.B., p. 72; CAUSE-PA M.B., p. 68.

²⁸⁸ The OCA's Main Brief (p. 110) suggests that the OCA has recommended revisions to PAWC's proposed limitation of liability language. To the contrary, the OCA has simply argued against the adoption of PAWC's proposal. OCA St. 5 at 22-23 and 29; OCA St. 5SR at 18-19.

²⁸⁹ OCA M.B., pp. 109-111.

certain conditions are met. This Commission-approved language is broad enough to limit liability for negligent, reckless or intentional conduct, where those conditions are met.

PAWC proposes to clearly limit liability for negligent, reckless or intentional conduct, where certain conditions are met. The OCA claims it is not readily apparent to what circumstances one or more of these conditions would not apply.²⁹⁰ The OCA is not as creative as some of the plaintiffs' lawyers who have sued PAWC.²⁹¹ Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of another.²⁹² PAWC's proposal would limit liability for negligence:

- (1) where the loss does not involve a duty of the Company;
- (2) where the loss does not involve a breach of a duty of the Company;
- (3) where the loss involves an act of God or other cause beyond the Company's control (i.e., where there is no causal connection between PAWC's conduct and the resulting injury); and
- (4) where the claim is based on a theory other than negligence (including, strict products liability or breach of contract).

PAWC respectfully submits that all of these limitations on liability are reasonable under Pennsylvania law and consistent with other Commission-approved tariffs.²⁹³ They should be approved without modification.

²⁹⁰ OCA St. 5SR at 18-19.

²⁹¹ See, e.g., *In re: Petition of Pennsylvania-American Water Company for a Declaratory Order Regarding the Provision of Water Service to Eric H. Talbert* (a Commission proceeding arising out of a plaintiff's attempt to institute a national class action based on a single incident in which he allegedly suffered damages due to a negligent flushing of PAWC's system or, in the alternative, a failure to construct PAWC's water system to prevent a water hammer caused by the local fire company).

²⁹² See, e.g., *Rabutino v. Freedom State Realty Co., Inc.*, 809 A.2d 933, 938 (Pa. Super. 2002).

²⁹³ See PAWC M.B., pp. 72-74.

B. Chapter 56 Customer Protections To Be Included In Tariff

PAWC agreed to revise its tariff to address the issues raised by the OCA,²⁹⁴ and has separately agreed to implement the programs agreed to with CAUSE-PA related to victims of domestic violence, language access, and tenant-related provisions.²⁹⁵

C. Align Tariff Language On Low-Income Customers With Actual Practice

The Company agreed to the OCA's recommendation to revise its tariff.²⁹⁶ The Company will also revise its tariff to the extent necessary to incorporate agreed-upon revisions to its low-income programs.

²⁹⁴ See PAWC M.B., p. 74; Joint Petition ¶ 69.

²⁹⁵ See Sections XV I, J, and K *infra*.

²⁹⁶ See PAWC M.B., p. 71. See also CEO Stip. ¶ 6; OCA M.B., p. 175.

XVII. CONCLUSION

For the reasons set forth above and in the Company's Main Brief, the Commission's investigation at Docket Nos. R-2020-3019369 and R-2020-3019371 should be terminated, the various Complaints consolidated therewith dismissed, and the proposed rates, terms and conditions under the Joint Petition for Non-Unanimous Settlement filed on October 30, 2020 permitted to become effective without modification.

Respectfully submitted,



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Dated: November 20, 2020

Appendix A

Pennsylvania-American Water Company 2020 Rate Case
Docket Nos. R-2020-3019369 (Water) and R-2020-3019371 (Wastewater)

Comprehensive List of Outstanding Issues

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
Revenue Requirement¹			
Overall Increase In Revenue Requirement*	<p>PAWC and the Pennsylvania Public Utility Commission (“PUC”) Bureau of Investigation and Enforcement (“I&E”), AK Steel, and the Pennsylvania-American Water Large Users Group (“PAWLUG”) have reached a “black box” settlement (the “Settlement”) in which PAWC and I&E agree to an overall increase in base rate revenue requirement of \$70.5 million. The \$70.5 million increase will be offset by an annualized credit of \$10.5 million in each of years 2021 and 2022 beginning on the effective date of Settlement rates. (See Deferred Income Taxes section below for explanation of the credit.) The total net increase will be implemented in two installments: (1) a net increase of \$40 million (\$50.5 million increase in base rates less a \$10.5 million credit) on the effective date of the Settlement rates; and (2) a second installment effective on January 28, 2022 that increases base rates to \$70.5 million, which will be off-set by a credit of \$10.5 million, for a net total increase of \$60 million for the twelve months ending January 27, 2023. The credit will cease to apply on and after January 28, 2023.</p> <p>Office of Consumer Advocate (“OCA”) Smith proposes a reduction in PAWC’s rates for water service of \$68.3 million and an increase in its rates</p>	<p>Joint Petition for Non-Uniform Settlement (“Joint Petition”) filed on October 30, 2020, ¶¶23-25.</p> <p>If the Settlement is approved without modification in this case, I&E, AK Steel and PAWLUG positions on issues denoted with an asterisk (*) in column 1 will become moot. In addition, the ALJ and PUC would not need to consider and rule upon issues relating to Rate Year 2 denoted with a double asterisk (**) in column 4.</p>	<p>OCA OSBA CAUSE-PA CEO PAWC</p>

¹ The following abbreviations are used hereafter for Pennsylvania-American Water Company’s (“PAWC’s”) revenue requirements:

Water Operations Excluding Steelton (“Water”)
Steelton Water Operations (“Steelton”)
Wastewater Sanitary Sewer System (“SSS”) Operations Excluding Sadsbury and Exeter (“WW SSS”)
Sadsbury SSS Operations (“Sadsbury”)
Exeter SSS Operations (“Exeter”)
Scranton Wastewater Combined Sewer System (“CSS”) Operations (“Scranton”)
McKeesport CSS Operations (“McKeesport”)
Kane CSS Operations (“Kane”)

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	<p>for wastewater service of \$30.9 million or a net total-Company rate reduction of \$37.4 million or, at a minimum, deny any rate increase in light of the health and economic effects of the COVID-19 emergency, as recommended by OCA witness Rubin.</p> <p>The OSBA recommends that the PUC deny PAWC’s requested rate relief or direct the Company to submit revised capital investment budgets for calendar year 2021 (“Rate Year 1”) and calendar year 2022 (“Rate Year 2”) substantially curtailing or eliminating capital expenditures for water and wastewater infrastructure as a purported means for PAWC to minimize its capital costs.</p> <p>The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) recommends that the PUC deny PAWC’s requested rate increase and require the Company to study the impact of the pandemic on the affordability of rates.</p> <p>The Commission on Economic Opportunity (“CEO”) recommends that PUC deny the Company’s proposed rate increase in light of the economic uncertainty and adverse consequences of the pandemic on low-income customers and condition any rate increase on PAWC’s implementation of the low-income program recommendations proposed by CEO witness Brady.</p> <p>PAWLUG did not submit testimony on the revenue requirement, but reserves the right to oppose PAWC’s proposed revenue requirement based on the record.</p>		
Rate Base Adjustments*	I&E and OCA proposed adjustments related to Cash Working Capital expenses.	Joint Petition, ¶ 33	OCA (RY2) PAWC
Operating Income Adjustments	OCA recommended adjustments related to declining residential usage, property tax expense, and depreciation expense.	Joint Petition, ¶¶ 27, 29 and 33	OCA (RY2) PAWC
Return on Equity*	PAWC recommends a return on equity (“ROE”) of 10.8%. I&E recommended an ROE of 9.30% applied to PAWC’s actual capital structure. The OCA recommended an ROE of 8.0% ROE applied to a		OCA PAWC

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	<p>hypothetical capital structure that includes additional debt and less common equity.</p> <p>The OCA recommendation includes its position that Section 1329 Fair Market Value Legislation and PAWC’s proposed multi-year rate plan reduce the Company’s risk.</p> <p>PAWLUG recommends that any approval of the RCS should result in a downward adjustment to PAWC’s ROE.</p>		
Average vs. Year-End Methodology to Develop Revenue Requirements	Under its proposed multi-year rate plan (“MYRP”), PAWC used an average rate base for Rate Year 1 (rate base at the beginning of 2021 and end of 2021 divided by two) and a year-end methodology (rate base as of December 31, 2022) for Rate Year 2. PAWC explained that, if Rate Year 2 were to be eliminated, as some parties proposed, then a year-end rate base should be used for Rate Year 1 consistent with PUC and appellate court precedent. The OCA contends that an average rate base should be used for both Rate Year 1 and Rate Year 2 under a MYRP and an end of year 2021 rate base if Rate Year 2 were eliminated.	Joint Petition, ¶ 33	OCA (RY2) PAWC
Labor-Related Expense	OCA proposes adjustments to prorate PAWC’s claimed Rate Year 2 salaries and wages and related payroll taxes by 9.5 months. The OCA also proposes related adjustments to reduce the expense for employee benefits (group insurance, 401k, Defined Contribution Plan and Employee Stock Purchase Plan) by the ratio of the OCA’s recommended level of salaries and wages.	Joint Petition, ¶ 33	OCA (RY2)** PAWC
Performance Compensation Expense*	The OCA recommends that the PUC disallow 50% of the Company’s claimed expense for cash-based Annual Performance Plan compensation for PAWC and American Water Works Service Company (“Service Company”) employees and eliminate 100% of PAWC’s expense for stock-based Long Term Performance Plan compensation for PAWC and Service Company employees.		OCA PAWC

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	I&E recommended holding performance compensation expense for PAWC and Service Company employees at 2019 historical levels for Rate Years 1 and 2.		
Inflation Adjustment*	I&E disagreed with the inflation factors PAWC used to adjust Rate Year 1 operating and maintenance expenses that were not the subject of other specific adjustments. I&E recommended the use of an inflation factor for PAWC’s Rate Year 1 operating and maintenance expenses based factors published in <i>Blue Chip Financial Forecasts</i> on July 31, 2020 for Rate Year 1 (i.e., 1.4%) and recommends no inflation adjustment for Rate Year 2.		<i>Not contested</i>
Corporate Campus Expense Allocation *	I&E recommended a change to PAWC’s allocation of corporate campus expense based on I&E’s recommended ROE.		<i>Not contested</i>
General Facilities Maintenance Expense*	I&E recommended an adjustment to normalize PAWC’s general facilities maintenance expense based on a three-year historical average.		<i>Not contested</i>
Capitalization Rate	OCA recommends that PAWC use the historical 2019 capitalization rate instead of a three-year historic average to calculate its labor-related expense claims.		OCA PAWC
Deferred Income Taxes	<p>OCA recommends a three-year amortization of all “unprotected” excess accumulated deferred income taxes (“EADIT”) resulting from the rate change occasioned by the Tax Cuts and Jobs Act in lieu of flow-back proposed by PAWC using the average rate adjustment method (“ARAM”), which returns the EADIT over the remaining life of the utility plant to which it relates.</p> <p>If the Settlement is approved without modification, the Company would: (1) flow back to customers all (“protected” and “unprotected”) EADIT it amortized (and continues to amortize) for financial reporting purposes during the period from January 1, 2018 through December 31, 2020 through the two-year \$10.5 million credit described in the summary of the Settlement with I&E provided above; and (2) flow-back all remaining “unprotected” EADIT to customers over approximately twenty years (approximately twice as fast as ARAM provides).</p>	Joint Petition, ¶¶ 24 and 30	OCA PAWC

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
Revenue Allocation and Rate Design			
Multi-Year Rate Plan*	<p>I&E and the OCA oppose PAWC’s proposed MYRP and recommend that the PUC calculate the revenue requirement used to establish the Company’s base rates on data for Rate Year 1 only (as if only a fully projected future test year (“FPFTY”) had been proposed).</p> <p>PAWLUG did not submit testimony on the MYRP, but reserves the right to oppose PAWC’s proposed MYRP based on the record.</p> <p>If the Settlement is approved without modification, PAWC would withdraw in its entirety the second year of its MYRP proposal.</p>	Joint Petition, ¶ 33	OCA** PAWC
Regionalization and Consolidation Surcharge (“RCS”)	<p>PAWC’s proposed RCS would adjust the Company’s rates between base rate cases to recover the revenue shortfall created by acquisitions undertaken pursuant to the authority of Section 1329 of the Public Utility Code (“Code”). I&E, the OCA, the OSBA, and the Pennsylvania-American Water Large Users Group (“PAWLUG”) opposed PAWC’s proposed RCS.</p> <p>PAWLUG alternatively proposed that if the RCS is approved, PAWC should be prohibited from collecting the RCS if its actual ROE falls within 50 basis points of the ROE approved by the Commission in this proceeding. PAWLUG additionally proposed that any approved RCS must allocate costs to each customer class in proportion to the cost of service for the acquired system.</p> <p>If the Settlement with I&E is approved without modification, PAWC would withdraw its RCS proposal.</p>	Joint Petition, ¶ 33	OCA** PAWC
Pension and Other Post-Employment Benefit Tracker	PAWC proposed to implement a tracker and establish deferral accounts for its pension and other post-employment benefits (“OPEB”) expenses. I&E, the OSBA, and the OCA opposed PAWC’s proposal. If the Settlement with I&E is approved without modification, PAWC would withdraw its pension/OPEB tracker and deferral proposal.	Joint Petition, ¶ 33	OCA** PAWC

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	PAWLUG did not submit testimony on the pension tracker, but reserves the right to oppose PAWC's proposed tracker based on the record.		
Water Cost of Service Study	OCA's proposed changes were adopted while one change was modified by PAWC in rebuttal. Billing determinants were updated. OCA agreed with those changes. Table on p. 4 of PAWC St. 12-R should be used for purposes of determining class revenue allocation in this case. See OCA St. 1 SR at 2, 17-18 and PAWC St. 12-R at 4.	Joint Petition, ¶ 70	<i>Not contested</i>
Reallocation of a Portion of PAWC's Wastewater Revenue Requirement to Water Operations Under Section 1311(c) of the Code*	<p>PAWC proposes to allocate approximately \$32.9 million (Rate Year 1) and \$35.2 million (Rate Year 2) of its wastewater revenue requirement to water customers.</p> <p>I&E recommends increasing rates for Scranton, McKeesport, Exeter, Sadsbury and Kane wastewater customers and reducing the amount of PAWC's wastewater revenue requirement allocated to water customers (\$21.3 million in Rate Year 1 and \$7.7 million in Rate Year 2).</p> <p>OSBA recommends an increase in the rates of Scranton wastewater customers and a corresponding reduction in the allocation of the wastewater revenue requirement to water customers (a reduction of \$2.3 million in Rate Year 1 and \$6.1 million in Rate Year 2).</p> <p>OCA recommended specific increases for the combined sewer systems and related recommendations for subsidies by water customers.</p> <p>PAWLUG did not submit testimony on the wastewater revenue requirement reallocation, but reserves the right to oppose PAWC's proposed reallocation based on the record.</p>	Joint Petition, ¶ 71 d; <i>see also</i> Appendix C to PAWC's Main Brief (Summary of Settlement Proof of Revenues Revised)	OCA OSBA
Reallocation of a Portion of PAWC's Steelton Revenue Requirement to Water Operations*	PAWC proposes a 40% increase over Rate Years 1 and 2 for Steelton water customers consistent with its commitment in the Steelton acquisition settlement to propose rates equal to the lower of cost of service or 1.4 times existing Steelton rates in the first post closing base rate case.	Joint Petition, Appendix A (Water Tariff); <i>see also</i> Appendix C to PAWC's Main Brief (Summary of Settlement Proof of Revenues Revised)	OCA

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	<p>I&E recommended increasing the rates for Steelton water customers and reducing the amount of Steelton’s revenue requirement allocated to all other PAWC water customers.</p> <p>OCA recommended that the PUC require PAWC investors to provide a subsidy of \$850,000 because PAWC’s acquired the Steelton water system pursuant to a PUC order of approval under Section 1329 of the Code.</p>		
Allocation of Act 11 and Steelton Revenue Requirements to Water Service Classes	<p>PAWC proposed to allocate the unrecovered revenue requirements to water service classes based on the class cost of service results shown in the applicable cost-of-service studies (i.e., PAWC Exhibits 12-C through 12-H) that contribute toward the overall revenue requirement shortfall.</p> <p>OSBA proposed an alternative methodology that allocates the unrecovered revenue requirements to water service classes based on the difference between (i) the corresponding (wastewater or Steelton) class’s total revenue requirement, as measured by the applicable cost-of-service study, and (ii) the proposed level of class revenues, summed across PAWC’s total wastewater and Steelton’s water operations.</p>	Joint Petition, Appendix C	<p>OSBA</p> <p>If the Settlement is adopted without modification, this issue will become moot because the Settlement Rates employ the allocation methodology proposed by Mr. Kalcic in written testimony.</p>
Stormwater Rate*	<p>I&E and the OCA both recommend that PAWC develop and propose a separate stormwater rate for its Scranton, McKeesport and Kane CSS operations in the Company’s next rate case.</p>	Joint Petition, ¶¶ 28 and 71 e.	<p>OCA</p> <p>If the Settlement is adopted without modification, this issue will become moot because PAWC agreed to propose stormwater recovery and rate methodologies in its next rate case consistent with the OCA’s proposal.</p>
Customer Charge*	<p>PAWC proposes customer charges of \$18.00 (Rate Year 1) and \$18.50 (Rate Year 2) for a 5/8-inch meter.</p> <p>I&E recommended a small increase to the present base-rate 5/8-inch customer charge from \$16.50 to \$17.00 in Rate Year 1 for Water Rate Zones 1, 2 and 3 and \$17.50 in Rate Year 2 for all rate zones. I&E also</p>	Joint Petition, ¶ 70 a. and Appendix A	CEO

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	<p>opposed the Company’s proposal to lower the residential customer charges for ¾-inch, 1-inch and 1 1/2-inch meters to the level of the 5/8-inch meter charge.</p> <p>Scale back of customer charge - OCA disagrees with PAWC witness Heppenstall’s position that customer charges should not be scaled back.</p>		
Commercial and Industrial Rate Structure*	<p>AK Steel Corp. recommends a 50% lower increase to the industrial fourth block usage rate and a 1.7% increase to the industrial customer charge.</p> <p>PAWLUG opposes AK Steel’s proposal. PAWLUG recommends that PAWC add a third rate block to the commercial rate class with the same usage threshold as the industrial class and adjust the first and second rate blocks to recover any revenue shortfall.</p>	Joint Petition, ¶ 70 and Appendix A	<i>Not contested</i>
Scale Back of Rates*	<p>If the PUC grants a rate increase less than PAWC’s original proposal, the Company recommends that the scale back of Steelton water rates and wastewater rates be first applied to the subsidy from Water rates and any additional scale back be applied to volumetric rates equally. PAWC also recommends a scale back of Rate Zone 1 water volumetric rates (except for Public Fire) and consolidation of Rates Zones 2 and 3 with Rate Zone 1 by 2022. I&E, the OSBA, and the OCA recommend alternative scale-back methodologies.</p> <p>PAWLUG did not submit testimony on the scale back proposals, but reserves the right to support a proportional scale back based on the record.</p>	Joint Petition, ¶¶ 70-71 and Appendices A-C	OCA
Low-Income Customer Issues			
Low-Income Bill Discount Program	<p>The OCA and CAUSE-PA both recommend that PAWC incorporate an arrearage management program into its low-income bill discount program.</p> <p>OCA also recommends a tiered discount based on the federal poverty level of its enrolled bill discount program customers.</p>		OCA CAUSE-PA PAWC

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	<p>CAUSE-PA recommends that PAWC transition from a bill discount to a percentage of income based benefit, targeting affordability at 2, 2.5, and 3% of household incomes for those a 0-50%, 51-100%, and 101-150%, respectively.</p> <p>CEO recommends that PAWC increase its low-income discounts for water service to 90% of the service charge and 15% of the usage charge.</p> <p>CAUSE-PA recommends that PAWC implement changes to its policies and procedures in an effort to increase enrollment in the H2O bill discount program.</p> <p>CAUSE-PA recommends that PAWC develop a low income conservation and line repair program within the H2O bill discount program to target high users enrolled in the program, in consultation with the low income advisory group.</p>		
Hardship Fund	CEO recommends that PAWC increase its annual contribution to its Dollar Energy Hardship fund to \$500,000.	<p>CEO Stip., ¶ 5</p> <p>Joint Petition, ¶ 38</p>	<p>CEO CAUSE-PA</p> <p>If the Settlement and CEO Stip. are adopted without modification, this issue would become moot since the Company is agreeing to the recommended increase in its annual contribution.</p>
COVID-19 Recommendations	<p>CAUSE-PA recommends that that PAWC:</p> <p>(1) waive reconnection for at least 12 months after final PUC Order in this case;</p> <p>(2) simplify income verification requirements for the Company’s Dollar Energy Hardship Fund for at least 12 months after the COVID-19 pandemic subsides;</p>	<p>CEO Stip., ¶¶ 1-4, 9</p> <p>Joint Petition, ¶¶ 34-37, 43</p>	<p>CAUSE-PA</p> <p>If the Settlement and CEO Stip. are adopted without modification, most of these issues would become moot. However, the Company objects to CAUSE-PA’s</p>

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	<p>(3) consider expanding the maximum grant amount available under the Hardship Fund to avoid termination;</p> <p>(4) work with stakeholders and its newly formed advisory group to develop a fully articulated plan for resuming terminations over and above the minimum standards set forth in the PUC’s Order entered October 8, 2020, including how to help low income customers avoid termination and remain in assistance programs;</p> <p>(5) conduct a comprehensive, third-party needs assessment to better assess the low income communities within its service territory and to adopt policies, programs, and procedures to better meet those in need over the long term;</p> <p>(6) waive the good faith payment requirement of PAWC’s Hardship Fund for at least a year from the date of the final order in this case;</p> <p>(7) increase efforts to identify new sources of H2O grand funding;</p> <p>(8) expand community outreach, including developing a community outreach plan to target the most at-need communities as a result of COVID-19, and seek input related to the same from the low income advisory group.</p>		<p>recommendation that PAWC be required to conduct a comprehensive, third-party needs assessment.</p>
Low-Income Customer Outreach, Data Collection and Reporting	<p>The OCA recommends that the PUC direct PAWC to budget \$50,000 and hire an expert consultant to develop a grassroots, “boots-on-the-ground” outreach approach for its low-income bill discount program. The OCA also recommends that PAWC identify and enroll low-income customers determined to be eligible for its bill discount program since January 2018, reconnect any of those customers who had service disconnected for nonpayment with a waiver of any associated fees, and apply the discount retroactively to the extent they remain PAWC customers.</p> <p>CAUSE-PA recommends that PAWC: (1) improve program data collection and reporting to more accurately count low-income customers; (2) improve outreach efforts, including but not limited to, by establishing a low income advisory group that meets initially at least quarterly to help advise PAWC in how to reach and serve low income customers and to encourage Hardship Fund donations; (3) develop training materials and call scripts on the Company’s bill discount program; and (4) develop a community outreach plan to target the communities with the greatest economic need.</p>	<p>Joint Petition, ¶¶ 37, 41, 43, 48</p> <p>CEO Stip., ¶¶ 7, 9, 10</p>	<p>CAUSE-PA OCA PAWC</p> <p>If the Settlement and CEO Stip. are adopted without modification, CAUSE-PA’s recommendations would become moot. However, the Company objects to OCA’s recommendation to budget \$50,000 to hire a consultant.</p>

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
Comprehensive Universal Service Plan	CAUSE-PA recommends that the PUC direct PAWC to file a comprehensive universal service plan within one year of the effective date of new rates, which includes a low-income line repair and conservation program to target high users in the Company’s bill discount program.		CAUSE-PA PAWC
Winter Shut Off Moratorium	CAUSE-PA recommends that PAWC extend the winter shut-off moratorium protection to all PAWC water and wastewater customers with household incomes at or below 250% of the federal poverty level.		CAUSE-PA PAWC
Discontinuance of Service to Tenant-Occupied Properties and Termination of Water Service to Municipal Sewer Customers	<p>CAUSE-PA contends that PAWC should improve its procedures and training to identify service addresses that are reasonably likely to be tenant occupied and proposes revisions to termination notices to explain Discontinuance of Services to Leased Premises Act (“DSLPA”) rights, along with various other recommendations to ensure the Company’s termination procedures comply with the DSPLA.</p> <p>CAUSE-PA contends that PAWC should comply with additional provisions with regards to the Water Services Act and Utility Services Tenants Rights Act when terminating service to customers of an unregulated sewer authority.</p>	CAUSE-PA Stip., (DSLPA) ¶¶ 1-9	<i>Not contested</i>
Language Access	CAUSE-PA recommends that PAWC conduct a needs assessment regarding the location or number of limited English proficiency customers and identify gaps in its language access services. CAUSE-PA also recommends that PAWC provide additional Spanish-language billing information and revisions to certain of the Company’s notice documents to include Spanish-language information and revise its process for determining the need for third party interpretation.	<p>Joint Petition, ¶ 57</p> <p>CAUSE-PA Stip. ¶¶ 1-8</p>	<i>Not contested</i>
Protection for Victims of Domestic Violence	CAUSE-PA recommends that PAWC make certain revisions and improvements to PAWC’s policies, procedures, call scripting, and training materials concerning victims of domestic violence in compliance with 66 Pa.C.S. 1417, Chapter 56, subchapter L-V.	<p>Joint Petition, ¶¶ 58-67</p> <p>CAUSE-PA Stip., ¶¶ 9-20</p>	<i>Not contested</i>

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
	CAUSE-PA further recommends that PAWC work with Pennsylvania Coalition Against Domestic Violence and establish a sub-committee within the low-income advisory group to revise and implement the revised policies and procedures, call scripting, and training materials concerning victims of domestic violence accepted by PAWC.		
Service Quality and Customer Service			
Customer Performance Service Standards	The OCA recommends minimum performance standards for several aspects of customer service (e.g., call center, leaks, main breaks, kept field appointments and response to complaints) with quarterly reporting and Commission response to non-compliance. The OCA's recommendation is that any MYRP should include penalties for non-compliance.		OCA PAWC
Call Center	The OCA recommends that the PUC impose the following performance standards on the Service Company call centers: (1) an average time of answer of 60 seconds or less and (2) a call abandonment rate of less than 4%. The OCA also recommends that PAWC be required to audit its two third-party call centers who handle outgoing termination notices to PAWC customers and receive inbound calls from those customers.		OCA PAWC
Customer Complaints	The OCA recommends that PAWC submit to the PUC's Bureau of Consumer Services a quarterly analysis of the Company's complaint trends, identify the root cause of the complaints, and document the steps taken to respond to this analysis. The OCA also proposes changes to the format of PAWC's customer complaint log and makes several recommendations regarding sewage backing up into basements in areas served by combined sewers.		OCA PAWC
Customer Satisfaction Surveys	The OCA recommends that PAWC develop a program of routine customer satisfaction surveys that conform to the methodology used by large Pennsylvania electric and gas utilities.		OCA PAWC

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
Training on Termination of Service	The OCA recommends that PAWC expand its training materials to instruct field representatives to contact their supervisor and/or business performance team members before terminating service when they encounter conditions that would result in danger or harm that goes beyond the law or PUC regulations.		OCA PAWC
Pressure Surveys and Pressures	If the Company elects to provide higher than 125 psi static pressure to serve some customers in order to serve other customers, the OCA recommends that PAWC either provide a pressure reducer protecting the customer's service line or insurance policy covering repair or replacement of the service line.		OCA PAWC
Main Extensions	The OCA recommends main extensions for potential customers in two areas impacted by fracking operations who meet the public and safety needs requirements under Tariff Rule 27.1(F).		OCA PAWC
Tariff Changes			
Limitation of Liability	PAWC proposes new limitation of liability provisions in its water and wastewater tariffs. The OCA opposes those proposed tariff changes.		OCA PAWC
Chapter 56 Compliance	The OCA recommends that PAWC include in its tariff language that identifies the essential consumer protections required by Chapter 56 of the PUC's regulations.	Joint Petition, ¶ 57-67, 69 CAUSE-PA Stip., (DSLPA) ¶¶ 1-9 CAUSE-PA Stip. ¶¶ 1-20	OCA If the Settlement and CAUSE-PA Stips. are adopted without modification, OCA's recommendations would become moot since the Company has agreed to the recommended tariff revisions.
Language regarding low-income customers being removed from the bill discount program	PAWC agreed to delete "To remain eligible for this rate, such customer must continually make timely payments on the discounted bills" from its water and wastewater tariffs.	CEO Stip. ¶ 6	OCA If the CEO Stip. is adopted without modification, OCA's

Issue	Summary of Positions	Applicable Settlement or Stipulation Provision	Parties Contesting Issue at Briefing Stage
			recommendation would become moot since the Company has agreed to the recommended tariff revisions.