



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 30, 2020

Via Electronic Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v.
Pennsylvania-American Water Company
Docket Nos.: R-2020-3019369 (Water) and R-2020-3019371 (Wastewater)
I&E Reply Comments

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) **Reply Comments** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Carrie B. Wright" with a stylized flourish at the end.

Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov

CBW/ac
Enclosures

cc: Honorable Conrad A. Johnson (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BUREAU OF INVESTIGATION AND ENFORCEMENT
REPLY COMMENTS**

TO ADMINISTRATIVE LAW JUDGE CONRAD A JOHNSON:

On October 30, 2020 a *Non-Unanimous Settlement* was filed in the instant proceeding. The settling parties included Pennsylvania American Water Company (PAWC), the Bureau of Investigation and Enforcement (I&E), the Pennsylvania American Water Large Users Group (PAWLUG). On November 20, 2020 Comments in opposition to the Settlement were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA). The Bureau of Investigation and Enforcement hereby submits that the terms and conditions of the *Joint Petition Non-Unanimous Settlement* (Joint Petition or Settlement) are in the public interest and represent a reasonable and equitable balance of the interests of PAWC and PAWC's customers, and hereby files these Reply Comments responding to the arguments set forth in the Comments filed by OCA, OSBA, and CAUSE-PA.

As explained in its Statement in Support, I&E has conducted an extensive investigation into this rate proceeding. The extensive and open discussions resulting therefrom culminated in the carefully negotiated and balanced settlement. I&E requests approval of the Joint Petition based on I&E's determination that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."¹ The Commission has recognized that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."² As a product of negotiation and compromise between multiple parties, this Settlement Agreement reflects concessions from PAWC's original rate request as well as concessions from I&E's direct testimony positions. Accordingly, the Bureau of Investigation and Enforcement believes that the terms and conditions of the Joint Petition are in the public interest.

In support of this position, I&E offers the following:

I. REPLY COMMENTS

The Commission encourages settlements, which generally eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion.³ Recently in the UGI base rate

¹ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

² *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

³ *Pa. PUC v. Venango Water Co.*, Docket No. R-2014-2427035, 2015 WL 2251531, at *3 (Apr. 23, 2015 ALJ Decision) (adopted by Commission via Order entered June 11, 2015); *See* 52 Pa. Code §5.231.

case Chairman Dutrieuille commended the parties for achieving a settlement.⁴ The

Commission's long-standing policy statement on settlements for major rate cases states:

In the Commission's judgment, 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. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.⁵

The above-referenced policy statement highlights the importance of settlement in Commission proceedings.

I&E is charged with representing the public interest in rate proceedings before the Commission. As a result, I&E must scrutinize the filing from multiple perspectives to determine what the appropriate result would be for the Company, as well as the customers, while also taking into account what is appropriate for utility regulation as a whole in the Commonwealth. Here, the Company and I&E, after close scrutiny, successfully achieved a Settlement Agreement of all the issues in this base rate case.

REVENUE REQUIREMENT

The main crux of the argument set forth by all parties who filed Comments to the Settlement seems to be that PAWC should not be entitled to a rate increase in the midst of a pandemic. No party, however, cites to any legal authority that would allow the Commission

⁴ *Pa. P.U.C. v. UGI*, Docket No. R-2019-3015162 Statement of Chairman Gladys Brown Dutrieuille (Order Entered October 8, 2020).

⁵ 52 Pa. Code § 69.401.

to deny PAWC a rate increase that it has otherwise shown it is entitled to. Furthermore, this is simply inconsistent with Commission precedent. During the pendency of the COVID pandemic, multiple rate cases have been before the Commission. In those cases that have been presented to the Commission for vote at Public Meeting, the Commission has agreed that utilities are entitled to a rate increase even despite the COVID pandemic.

OCA states that “permitting the Company to increase its base rates by \$70.5 million through multiple steps is not supported by the evidence of record in this case.”⁶ OSBA claims “there exists no substantial evidence in the evidentiary record to support the \$70.5 million revenue requirement agreed to in the *Non-Unanimous Settlement*.”⁷ These statements seem to be largely based on the conclusion that the COVID-19 pandemic should prevent a utility from being allowed to increase rates. I&E submits that these claims are simply untrue.

Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia, 292 U.S. 679, 692-93 (1923) (“*Bluefield*”), and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“*Hope Natural Gas*”) are the seminal cases that present the legal standards regarding the appropriate level of revenue for a utility. In *Bluefield*, the Supreme Court stated:

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

⁶ OCA Comments, p. 4.

⁷ OSBA Comments, p. 4.

in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.⁸

Twenty years later, in *Hope Natural Gas*, the Supreme Court reiterated:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.⁹

In I&E's view, based on the above referenced cases, it is well settled that public utilities are currently entitled to revenue increases provided that the utility shows its expenses were reasonably and prudently incurred and the rate increase results just and reasonable rates. It is clear that PAWC's operations and capital expenditures will not stop as a result of the COVID pandemic and, as a result, PAWC will need a revenue stream that allows for the provision of safe and reliable service to all customers. Provision of safe water is particularly important in the midst of this pandemic. There exists ample evidence introduced by both I&E and PAWC to show that some level of rate increase is appropriate. As there are no statutes, regulations, or case law to suggest utilities are not currently entitled to a rate

⁸ *Bluefield*, 262 U.S. at 692-93.

⁹ *Hope Natural Gas*, 320 U.S. at 603.

increase, I&E believes the evidence provided is sufficient to support the rate increase agreed upon in the Settlement.

As explained in the I&E Statement in Support, I&E is charged with representing the public interest in rate proceedings before the Commission. As such, I&E has an obligation to balance the needs of both the utility and its customers, while also considering what is appropriate for regulation overall in the Commonwealth. Because of this duty, I&E sought to strike a careful balance which considered the appropriate level of revenue required by PAWC to provide its ratepayers with safe and reliable service, while also taking into account that a global pandemic which has greatly impacted the ability of some consumers to pay their utility bills. This is evident throughout the Settlement. In fact, the revenue increase agree upon recognizes that while PAWC may be entitled to a rate increase, steps must be put in place to ease the burden on ratepayers as a result of the COVID-19 pandemic. These important provisions include a phased in rate increase that is well below the increase proposed in the filing along with a \$10.5 million rate credit. These provisions would not be available absent the Settlement agreement.

Importantly, the Commission recently answered the questions of whether it agrees that public utilities are entitled to rate increases in the midst of the COVID-19 pandemic. In its decision in the recent PGW base rate case the Commission noted that the ALJs in their Recommended Decision reasoned “the COVID-19 effect in Philadelphia, the Commonwealth, and the country, gives pause to a rate increase at this time.”¹⁰ As a

¹⁰ *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 41 quoting RD (Order entered November 19, 2020).

result the ALJs recommended that the rate increase go into effect six months later than provided for in the Settlement agreement in that proceeding.¹¹ In its final Order, the Commission determined that while the ALJs' recommendation was well meaning, it was not supported by law and the appropriate resolution was to have rates go into effect at the time agreed upon within the settlement.¹² In addition, on October 8, 2020, the Commission approved, a Settlement in the recent UGI base rate case, which included a stepped-in rate increase similar to the one agreed to in the instant Settlement. In that proceeding the parties were commended by Chairman Dutrieuille for reaching a settlement. The Chairman noted, "I would like to commend UGI, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, and all other parties in the proceeding (Parties) for reaching a Joint Settlement which I believe is in the public interest."¹³ Much like the instant case, the UGI Settlement provides for a stepped in rate increase with the first step of the phased-in rate increase designed to produce \$10 million of increased revenue on an annual basis, will go into effect on January 1, 2021 and be effective through June 30, 2021.¹⁴ On July 1, 2021, the second \$10 million step of the phased-in rate increase, will go into effect.¹⁵ However, as explained in the RD, "in order for UGI Gas to receive the full benefit of the revenue during the FPFTY itself (i.e., for the period that rates would

¹¹ *Id.*

¹² *Id.* at 70-71.

¹³ *Pa. P.U.C. v. UGI*, Docket No. R-2019-3015162, Statement of Chairman Gladys Brown Dutrieuille (Order Entered October 8, 2020).

¹⁴ UGI RD, p. 34.

¹⁵ *Id.*

have been in effect as a result of this proceeding), the parties have agreed that UGI Gas can recover, in the third step of the phase-in, the deferred revenue that would have been recovered from customers if the Company had fully implemented the \$20 million increase in a single step on January 1, 2021.”¹⁶ This Commission has made it clear that its position is that granting rate increases is still appropriate at this time, so long as the utility bears its burden of proving that the increase is warranted.

As a result, when the above referenced base rate cases are viewed along with the *Bluefield* and *Hope Natural Gas* cases cited before, it becomes clear that public utilities are entitled to rate increases at this time. As the record evidence provided by both I&E and the Company shows that it is appropriate to increase PAWC’s rates at this time, I&E believes the Settlement is well supported. PAWC will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting increase minimizes the impact of the initial request. Mitigation of the level of the rate increase benefits ratepayers and results in “just and reasonable rates” in accordance with the Public Utility Code, regulatory standards, and governing case law.¹⁷ The provisions contained in this Settlement contain important protections for ratepayers. PAWC is under obligation to provide customers with safe and reliable service at reasonable rates. As such, I&E submits that the revenue increase agreed to is in the public interest as it allows PAWC to implement the provisions of the Settlement while mitigating the impact on customers, and

¹⁶ *Id.*

¹⁷ 66 Pa. C.S. § 1301.

still allowing for protections related to COVID-19, low-income, language access and protection from abuse account concerns.

It is important that utilities are able at all times to provide safe and reliable service and the efforts a utility puts forth to provide this service are not without costs. This acknowledges the need for a mitigated rate increase, while also recognizing that financially healthy utilities are beneficial to customers who rely on them to provide safe and reliable service. The rate increase agreed upon in the instant Settlement strikes the appropriate balance of those interests.

COMBINED SEWER SYSTEM REVENUE REQUIREMENT

Per the Settlement PAWC has agreed that in future rate filings the it will submit one or more separate stormwater and wastewater cost-of-service studies (COSS) for each of its combined sewer systems (CSS) currently consisting of McKeesport, Scranton and Kane and including any other CSS acquired by the time of each of the future rate filings. OCA objects to this provision because it leaves the number of COSSs up to PAWC.¹⁸ This, however, is simply not a failing of the Settlement itself, but the reality of rate case filings in general. While there is certainly information that utilities are required to provide in a base rate case, the form or fashion of the information is oftentimes in the hands of the utility. As a result, parties often have to file discovery to obtain further information, or information in a form that is more useful to them. To be clear, I&E continues to support this provision and believes the information the Company has agreed

¹⁸ OCA Comments, p. 7.

to provide in its next rate filing is important for the establishment of just and reasonable rates as it will alert the parties to the appropriate cost of service. Therefore, I&E submits this term is in the public interest as it will provide the parties information necessary for setting rates. To the extent that any party does not believe the information provided to be sufficient, discovery.

STORM WATER RATE (SWR)

OCA objects to the Company's agreement to propose potential recovery and rate methodology options for storm water costs of CSSs in its next general wastewater or combined water/wastewater base rate filing.¹⁹ As noted in the Settlement, this proposal will include an analysis of the recovery of such storm water costs through various methodologies including forms of separate storm water rates, and a description of to whom the rates would apply, as well as meetings with interested parties at certain intervals to discuss any updates and mechanisms the Company is considering.

As explained in the I&E Statement in Support, this provision is in the public interest as it acknowledges that there is a need to further explore this issue. It recognizes that time is involved in establishing an accurate SWR and further recognizes that there are other mechanisms apart from a SWR that might be appropriate for the recovery of these costs while still adhering to the principle that the one who caused a cost is who should be responsible for that cost. In addition, it allows for the parties, including the OCA, to meet and discuss these options between rate cases so that the parties have an

¹⁹ OCA Comments, pp. 11-12.

opportunity to explore the various options in a less constrained timeframe that a base rate case affords. This gives all parties involved the opportunity to weigh in on the issue before PAWC's next base rate case is filed and, as all parties have an opportunity to weigh in, it affords the parties better opportunity to control what information they see in the next base rate case related this issue. It is beneficial to all parties to have more information regarding this issue before the filing of the next base rate case. Therefore, I&E submits that this provision is in the public interest.

REVENUE ALLOCATION AND RATE DESIGN

OCA objects to the revenue allocation and rate design as agreed to in the partial Settlement.²⁰ OCA notes that it believes there was no explanation for how the customer or consumption charges were determined.²¹ This argument largely ignores the fact that the Settlement was a black box settlement in which the individual components that made up the customer or consumption charge were not explicitly agreed upon. I&E is unaware of any settlement of a base rate case in which the specific components of the customer charge were agreed upon. However, by way of explanation, I&E would note that the customer charges of \$17.00 for the first step of the rate increase and \$17.50 for the second step as agreed to in the Settlement were the same as those proposed by I&E witness Cline in Direct Testimony.²² I&E witness Cline explained that a \$17.00 and \$17.50 per month customer charge approximates the monthly customer cost per customer for their respective rate

²⁰ OCA Comments, pp. 8-10.

²¹ OCA Comments, p. 8.

²² I&E St. No. 4, p. 39.

years.²³ As Witness Cline explained, the Company provided two customer cost analyses. The first customer cost analysis included all costs being allocated to the customer cost function and resulted in a unit cost of \$21.05 per month in rate year 1 and \$21.52 per month in rate year 2.²⁴ The second customer cost analysis, which was accepted by Witness Cline, relied on the allocation of costs more directly applicable to customers. The second customer cost analysis was \$17.06 per month per customer in rate year 1 and \$17.50 per month per customer in rate year 2.²⁵ As a result, while specific components of the customer charge have not been agreed upon, I&E believes there is sufficient evidence in the record to support a finding that the customer and consumption charges agreed to in the Settlement are appropriate.

As explained in the I&E Statement in Support, a utility must be allowed to recover the fixed portion of providing service through the implementation of the proper customer charge.²⁶ As explained by I&E Witness Cline “...it is appropriate to limit the increase in the customer charges and to consider the affordability of rates through a lower customer charge and higher usage rate.”²⁷ This fixed charge provides PAWC with a steady, predictable level of income which will allow PAWC to recover certain fixed costs such as metering, billing, and payment processing.²⁸ However, limiting the requested increase benefits ratepayers by allowing them to save more money through conservation. Shifting

²³ I&E St. No. 4, p. 39.

²⁴ I&E St. No. 4, p. 34.

²⁵ I&E St. No. 4, p. 34.

²⁶ Jim Lazar. “Electric Utility Residential Customer Charges and Minimum Bills: Alternative Approaches for Recovering Basic Distribution Costs.” Regulatory Assistance Project (Nov. 2014).

²⁷ I&E St. No. 4, p. 35.

²⁸ *Id.*

costs to the volumetric portion of a customer's bill allows for the immediate realization of the benefit of conserving usage. Designing rates to allow customers to have greater control of their utility bills is in the public interest.

I&E submits that the manner in which the customer charge was agreed to was not materially different than any other settlement that has come before the Commission recently. The Commission approved settlements in both the UGI²⁹ and PGW³⁰ base rate cases recently and in neither did the settling parties agree to specific components of the customer charge. As with all aspects of the revenue increase, a customer charge can be arrived at a variety of different ways. In this way, the black box nature of the settlement is preferable because it allows the parties to agree upon an ultimate outcome without making compromises to positions they may wish to take in future litigation.

OCA further disagrees with the revenue allocation provided for in the Settlement.³¹ It is well established that a public utility shall not establish or maintain unreasonable differences in rates among rate classes.³² While there may exist sound justification for some discrepancies in rates, this alone does not justify allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time. The revenue allocation set forth in the Settlement not only reflects a compromise of the Joint Petitioners, but it also produces an allocation that moves each class closer to its actual cost of service.

²⁹ *Pa. P.U.C. v. UGI*, Docket No. R-2019-3015162 (Order Entered October 8, 2020).

³⁰ *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered November 19, 2020).

³¹ OCA Comments, p. 9.

³² 66 Pa. C.S. § 1304.

As explained in the I&E Statement in Support, I&E was particularly concerned about certain divisions subsidizing other divisions; however, the Settlement achieved I&E's goal of limiting the subsidies paid for by PAWC water customers. The Settlement mitigates the subsidies proposed in this rate case and moves the divisions closer to their cost to serve, which is consistent with the principles of *Lloyd* wherein the Court held that the Commission should not allow "one class of customers to subsidize the cost of service for another class of customers over an extended period of time."³³ Accordingly, this revenue allocation proposed in the instant Settlement is in the public interest because it is designed to limit customer class subsidies, and to place costs upon the classes responsible for causing those costs.

In sum, shifting costs to the volumetric portion of a customer's bill allows for the immediate realization of the benefit of conserving usage while providing a predictable stream of revenue for a utility. In addition, designing rates to allow customers to have greater control of their utility bills is in the public interest. Furthermore, it is appropriate to move customer classes toward their cost to serve. Therefore, the rate design and revenue allocation provisions of the Settlement are in the public interest.

OTHER SETTLEMENT PROVISIONS

In addition to the above referenced commitments, there are numerous other Settlement terms that protect customers that would not have been realized absent the instant Settlement. For instance, PAWC will provide assistance to customers impacted as

³³ *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, at 1020 (Pa Cmmwlth 2004).

a result of COVID-19 relief plan.³⁴ This assistance plan consists of, among other things, a waiver of the good faith payment requirement for PAWC's H2O Help to Others Hardship Fund for one year from the date of the final order; permitting customers to self-certify income for purposes of qualifying for the PAWC's H2O Help to Others Hardship Fund through either March 31, 2021, or until the date on which the Governor's Proclamation of Disaster Emergency is rescinded; expanded, targeted community outreach; and Company has agreed to increase its annual contribution to its H2O Help to Others hardship grant program from its current level of \$400,000 to \$500,000 for water operations and from \$50,000 to \$100,000 for wastewater operations.

PAWC has also agreed to make certain enhancements to its low-income program.³⁵ These issues are particularly important when coupled with the current tumultuous state of the economy resulting from the COVID-19 pandemic, it is clear that assistance to low-income customers is necessary. At this juncture, access to clean water is extremely important. Whatever that can reasonably be done to ease the burden on these customers and provide them with the opportunity to be able to afford their utility bills, and thus have access to clean water, is in the public interest. Approval of the instant Settlement will guarantee implementation of the low-income proposals and COVID-19 proposals outlined therein. I&E, therefore, maintains that approval of the Settlement is in the public interest.

³⁴ Settlement Petition, ¶ C.34-C.39.

³⁵ Settlement Petition, ¶ C.40-C.45.

Further, there are provisions related to language access and protection from abuse accounts.³⁶ PAWC has also agreed to withdraw its pension and OPEB tracker, as well as its regionalization and consolidation surcharge mechanism as part of this Settlement.³⁷ These important compromises would not have been available without the agreement of the settling parties. All of these factors point to the Settlement being in the public interest.

The objecting parties seem not to take issue with, and in some instances even support, PAWC implementing these measures while at the same time are requesting that the Commission deny the Company a rate increase. Doing so is not in the public interest; therefore, I&E respectfully requests that the terms contained in the Settlement be approved without modification.

II. CONCLUSION

Based on I&E's analysis of the base rate revenue increase requested by Pennsylvania American Water Company, acceptance of this proposed Joint Petition is in the public interest. In sum, I&E notes the instant Settlement contains important provisions that protect ratepayers, mitigate the rate increase, and provide PAWC with a level of revenue which allows it to earn a sufficient return in order to continue to provide its customer with safe and reliable service.

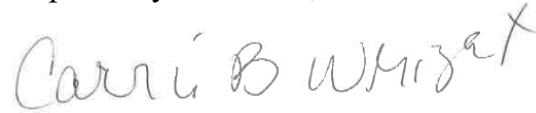
As such, the Commission's Bureau of Investigation and Enforcement supports the *Joint Petition For Non-Unanimous Settlement* as being in the public interest and respectfully requests that Administrative Law Judge Conrad A. Johnson recommend, and

³⁶ Settlement Petition, ¶ C.50-C.67.

³⁷ Settlement Petition, ¶ B.33.

the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright". The signature is written in dark ink and is positioned above the printed name and title.

Carrie B. Wright

Prosecutor

PA Attorney ID No. 208185

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Dated: November 30, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Comments** dated
November 30, 2020, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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