



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

January 11, 2021

**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 Exceptions**

Dear Secretary Chiavetta:

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

Copies of this letter are being served on parties of record as evidenced in 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,

Carrie B. Wright  
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Bureau of Investigation and Enforcement  
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CBW/jfm  
Enclosures

cc: Hon. Conrad A. Johnson, OALJ – Pittsburgh (*via email only*)  
Office of Special Assistants (*via email only* [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Carrie B. Wright  
Prosecutor  
PA Attorney ID No. 208185

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Dated: January 11, 2021

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## **I. INTRODUCTION**

On April 29, 2020, Pennsylvania American Water Company (PAWC) filed field Supplement No. 19 to Tariff Water – Pa. P.U.C. No. 5 and Supplement No. 19 to Tariff Wastewater – Pa. P.U.C. No. 16, requesting an increase in total annual operating revenues totaling \$138.6 million. The rate request was intended to become effective June 28, 2020, with \$92.4 million of the rate increase intended to go into effect in 2021, and \$46.2 million intended to go into effect in 2022.

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency in the Commonwealth of Pennsylvania as a result of the coronavirus pandemic (COVID-19). Because of the difficulties that arose from the COVID-19 pandemic, OCA filed a Motion to Extend the Statutory Suspension Period of the instant proceeding.

Administrative Law Judge Conrad A. Johnson was assigned to preside over the proceeding. A call-in telephonic prehearing conference was held as scheduled on June 4, 2020. On June 4, 2020, the Chief Administrative Law Judge Charles Rainey issued an Order granting OCA's Motion to extend the Section 1308(d) suspension period by forty-five days, until March 15, 2021. At the prehearing conference, a schedule was also memorialized, identifying filing dates for the parties' testimony, setting dates for public input hearings, and scheduling dates for evidentiary hearings.

On June 24, 2020, PAWC filed a Petition for Reconsideration of CALJ Rainey's Order granting the 45-day extension. On August 6, 2020, the Commission adopted an Order granting in part and denying in part PAWC's Petition for Reconsideration. The Commission granted the 45-day extension but required ALJ Johnson to issue a Recommended Decision by December 24, 2020, thus necessitating changes to the agreed upon procedural schedule.

Eight public input hearings were held electronically on August 18, 25, 26, and 27, 2020, at 1:00 p.m. and 6:00 p.m. each day.

Pursuant to the revised procedural schedule as a result of the Commission's Order related to PAWC's Petition for Reconsideration, the parties submitted direct and rebuttal testimony on September 8, 2020 and September 29, 2020, respectively. Surrebuttal testimony was served on October 20, 2020.

On October 27, 2020 and October 28, 2020, evidentiary hearings were held for the purpose of admitting testimony and cross examination of rejoinder testimony of certain PAWC witnesses. The active parties, however, largely waived cross-examination with limited exception, and all of their testimony and exhibits were admitted into the record.

A Non-Unanimous Settlement was filed with the Commission on October 30, 2020. I&E actively participated in good faith settlement negotiations and was able to resolve all issues in the Settlement.

Main and Reply Briefs as well as Comments to the Settlement and Reply Comments to the Settlement have been filed. ALJ Johnson issued his Recommended Decision on December 22, 2020. Exceptions were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

I&E now files these timely Reply Exceptions in response to the Exceptions raised by OCA, OSBA, and CAUSE-PA.

## II. REPLY EXCEPTIONS

### 1. **Reply to OCA Exception No. 1: The ALJ Applied the Proper Standard of Review to the Settlement (RD, pp. 87-88 and 122-126).**

In its Exceptions, OCA indicates that the ALJ implied he was bound, by the very existence of a settlement to approve that settlement. This is simply untrue and is a misinterpretation of the ALJ's recommendation. While the ALJ does note that he is bound by the Commission policy favoring settlements,<sup>1</sup> nowhere does he state this is his only reason for approving the instant Settlement. In fact, reading just one paragraph further in the Recommended Decision ALJ Johnson notes that he has weighed all evidence and duly considered the competing arguments of the Settling and Non-Settling parties.<sup>2</sup> He then goes on to state that as he finds the Settlement in the public interest, he also finds that "...PAWC has met its burden of proving that the proposed rates for the revenue increase are just and reasonable, under Section 1301 of the Code, 66 Pa. C.S. § 1301."<sup>3</sup>

As explained in the I&E Statement in Support,<sup>4</sup> and the ALJ's Recommended Decision,<sup>5</sup> this Commission looks favorably upon settlements and encourages the parties, where possible, to endeavor to settle cases. The ALJ also acknowledged that the burden lies with the Company to establish the justness and reasonableness of its requested rate increase.<sup>6</sup> In reaching his conclusion, the ALJ simply found that PAWC had met its burden of establishing that the Settlement was in the public interest, while noting that there is long-standing Commission precedent which encourages parties before the Commission to work to achieve a settlement. As

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<sup>1</sup> RD, p. 126.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 127.

<sup>4</sup> I&E Statement in Support, pp. 5-6.

<sup>5</sup> RD, pp. 87-88.

<sup>6</sup> RD, p. 87.

explained before, because the nature of settlements reflect compromise on the part of the parties involved, they inherently promote the public interest.<sup>7</sup> The ALJ laid out the legal standards and burden of proof in his Recommended Decision.<sup>8</sup> It seems abundantly clear that that ALJ was aware that the burden of proving the justness and reasonableness of their claims remained with PAWC and that the evidence presented must be substantial. The ALJ, however, also must acknowledge that there is Commission precedent that favors settlements. It seems clear that the ALJ did not apply an erroneous burden of proof, but was simply acknowledging that there is Commission case law and policy that favors settlements.

**2. Reply to CAUSE-PA Exception No. 1, OSBA Exception Nos. 1 and 2, and OCA Exception No. 2: The ALJ Properly Recommended Approval of the Settlement Revenue Requirement (RD, pp. 122-126).**

After evaluating all of the testimony and reviewing the Main Briefs and Reply Briefs submitted in this proceeding, the ALJ recommended the Commission adopt the Settlement reached by Pennsylvania American Water Company (PAWC), I&E and Pennsylvania American Water Large Users Group (PAWLUG) and supported by AK Steel Corporation.

CAUSE-PA excepts to the ALJ's recommendation noting stating that "[f]or low-income customers, the rate increase proposed in the Settlement will have an immediate and profound impact on their ability to afford and stay connected to services."<sup>9</sup>

In Exceptions, OSBA notes that it does not believe it is appropriate to increase rates when customers may be financially struggling,<sup>10</sup> and that because the revenue requirement agreed to in the Settlement is a black box number, meaning that individual components were not specifically agreed to, but an overall number was agreed to, there is no evidence in the record to support the

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<sup>7</sup> *Pa. P.U.C. v. C S Water and Sewer Associates*, 74 PA P.U.C. 767, 771 (1991).

<sup>8</sup> RD, pp. 87-88.

<sup>9</sup> CAUSE-PA Exceptions, p. 6.

<sup>10</sup> OSBA Exceptions, p. 4-5.



rate increase agreed upon in the settlement.<sup>11</sup>

OCA notes that it does not it is just and reasonable for PAWC to raise its rates during the COVID-19 pandemic.<sup>12</sup>

*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 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.<sup>13</sup>

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.<sup>14</sup>

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<sup>11</sup> OSBA Exceptions, pp. 5-6.

<sup>12</sup> OCA Exceptions, p. 4.

<sup>13</sup> *Bluefield*, 262 U.S. at 692-93.

<sup>14</sup> *Hope Natural Gas*, 320 U.S. at 603.

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

Further, OSBA contends that the Settlement revenue requirement cannot be accepted because it is a black box revenue number in which the components have not been specified, and therefore, the ALJ is unable to find that it is supported by substantial evidence is, frankly, absurd.<sup>15</sup> OSBA is well aware that black box settlements are common in Commission practice as every base rate case in recent Commission history that has been settled, most of which OSBA was a settling party to, were presented to the ALJ and Commission as black box settlements. Agreeing upon each and every element that makes up a settlement revenue requirement would be almost impossible, and if it were possible would likely take more time than just fully litigating the proceeding. In his Recommended Decision, the ALJ correctly notes that:

Black box settlements avoid the need for protracted disputes over the merits of individual revenue adjustments and avoid the need for a diverse group of stakeholders to attempt to reach a consensus on a variety of financial numbers. It is unlikely that the Settling Parties would have been able to reach a consensus on each of the disputed accounting and ratemaking issues raised in this matter, as policy and legal positions can differ widely....Attempting to reach an agreement regarding each adjustment in this proceeding would likely have prevented any settlement from being reached.<sup>16</sup>

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<sup>15</sup> OSBA Exceptions, p. 6.

<sup>16</sup> RD, pp. 125-126.

The ALJ's contention is supported by prior Commission cases as it has previously endorsed the use of black box settlements:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. P.U.C. v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. P.U.C. v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.<sup>17</sup>

Further, the prior Chairman of the Commission explained that black box settlements are beneficial in the context of rate proceedings precisely because of the difficulties in reaching an agreement on each component of a company's revenue requirement calculation, when he stated

determination of a company's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company's cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. Black box settlements are an integral component of the process of delivering timely and cost-effective regulation.<sup>18</sup>

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<sup>17</sup> *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013).

<sup>18</sup> *See*, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662. *See also*, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens' Electric Company of Lewisburg, PA*, Docket No. R-2010-2172665.

To now adopt OSBA's position that black box settlement cannot be approved because the components that make up the revenue requirement are not specified is contrary to common practice before the Commission and would serve to do nothing but cease the settlement of all base rate cases. This would not be appropriate as the Commission has, in fact, recognized that settlements are inherently in the public interest stating that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."<sup>19</sup> Questioning the validity of black box settlements simply because OSBA does not agree with the terms of this Settlement is contrary to the public interest and disingenuous given that OSBA has been a signatory to numerous black box settlements presented to this Commission. As explained in the I&E Statement in Support, the Commission established I&E to serve as the prosecutory bureau to represent the public interest in ratemaking and utility service matters, and to enforce compliance with the Public Utility Code.<sup>20</sup> Therefore, I&E strongly objects to OSBA's position which would serve to diminish the public interest and is wholly inconsistent with prior Commission precedent which allows for, and specifically supports the use of, black box settlements.

Further, the Commission has already answered the question of whether public utilities are entitled to rate increases during the COVID-19 pandemic. In the recent PGW base rate case, the Recommended Decision reasoned "the COVID-19 effect in Philadelphia, the Commonwealth, and the country, gives pause to a rate increase at this time."<sup>21</sup> As a result, the ALJs recommended that the phased-in rate increase proposed in the settlement go into effect six

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<sup>19</sup> *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 Pa P.U.C. 767, 771 (1991).

<sup>20</sup> *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

<sup>21</sup> *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 41 quoting RD (Order entered November 19, 2020).

months later than provided for in the settlement.<sup>22</sup> In its final Order, the Commission approved the settlement without alteration, determining 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.<sup>23</sup>

In addition, on October 8, 2020, the Commission approved, a settlement in the recent UGI base rate case. In that proceeding the parties were commended by the Chairman of the Commission for achieving a settlement. The Chairman stated, "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."<sup>24</sup> The UGI settlement contained a stepped in rate increase, similar to the instant case, with the first step of the phased-in rate increase designed to produce \$10 million of increased revenue, and the second step designed to produce an additional \$10 million in revenue.<sup>25</sup> In addition, "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 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."<sup>26</sup> As can be seen, the Commission has adopted a settlement during the pendency of this pandemic that even goes beyond what was agreed upon in the instant case. Therefore, I&E believe this Commission, in adopting the UGI settlement, has made it clear

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 70-71.

<sup>24</sup> *Pa. P.U.C. v. UGI*, Docket No. R-2019-3015162, Statement of Chairman Gladys Brown Dutrieuille (Order Entered October 8, 2020).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

that its position is that granting rate increases, even those that are contained in a black box settlement, is still appropriate at this time, so long as the utility bears its burden of proving that the increase is warranted.

The Commission has made its position, both on black box settlements and rate increases during this pandemic, abundantly clear. The fact remains that at this juncture, both are acceptable to the Commission. Therefore, the ALJ committed no error by adopting the Settlement achieved in the instant proceeding.

**3. Reply to OCA Exception Nos. 8 and 9: The ALJ Properly Adopted the Settlement Rate Design and Revenue Allocation. (RD, p. 122-126).**

The ALJ appropriately properly recommended the adoption of the rate design and revenue allocation set forth in the Settlement.<sup>27</sup>

OCA objects to the residential customer charges agreed to in the Settlement because the “Non-Unanimous Settlement and Appendices do not provide any explanation of how the customer charges or consumption charges were determined.”<sup>28</sup> Further OCA states “it is not possible to determine the basis for these changes or to determine whether the impact, from a rate design perspective, results in just and reasonable rates.”<sup>29</sup>

First, it is important to note that the way the residential customer charges were arrived at in this proceeding was no different than the way they are arrived at in any other settlement proceeding. However, 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.<sup>30</sup> I&E witness Cline explained that a \$17.00 and \$17.50 per

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<sup>27</sup> RD, p. 128-129.

<sup>28</sup> OCA Exceptions, p. 26.

<sup>29</sup> OCA Exceptions, p. 26.

<sup>30</sup> I&E St. No. 4, p. 39.

month customer charge approximates the monthly customer cost per customer for their respective rate years.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> Therefore, there is record evidence to support the customer charges contained in the Settlement.

As part of a black box Settlement, it is true that the specific components that would make up the customer charge were not agreed upon. In fact, I&E is unaware of any settled base rate cases in recent Commission history in which the specific components of the customer charge were agreed upon. Therefore, there is no reason to deny the customer charge specifically because the components thereof were not expressly agreed to by the parties to the Settlement. As with the OSBA recommendation that the revenue requirement cannot be accepted as just and reasonable without a breakdown of the components, to adopt the OCA position that the customer charge cannot be accepted as just and reasonable without a break down of the components would have a chilling effect on future base rate case settlements and is inconsistent with prior Commission precedent.

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<sup>31</sup> I&E St. No. 4, p. 39.

<sup>32</sup> I&E St. No. 4, p. 34.

<sup>33</sup> I&E St. No. 4, p. 34.

In addition, OCA disagrees with the ALJ's recommendation to adopt the revenue allocations as set forth in the Settlement.<sup>34</sup> The OCA notes that it does not believe the allocation of wastewater revenue requirement to water operations is reasonable.<sup>35</sup>

It is well established that a public utility shall not establish or maintain unreasonable differences in rates among rate classes.<sup>36</sup> 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. The allocation set forth in the Settlement serves to mitigate the increase on wastewater customers, some of whom might experience rate shock if moved to their full cost to serve in one step, without placing an undue burden on water customers.

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.<sup>37</sup> 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."<sup>38</sup> Accordingly, this revenue allocation proposed in the instant Settlement is in the

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<sup>34</sup> OCA Exceptions, pp. 26-29.

<sup>35</sup> OCA Exceptions, p. 26.

<sup>36</sup> 66 Pa. C.S. § 1304.

<sup>37</sup> I&E Statement in Support, p. 14.

<sup>38</sup> *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, at 1020 (Pa Cmmwlth 2004).



public interest because it is designed to limit customer class subsidies and allocates costs to the classes responsible for causing those costs.

As part of a black box Settlement, the specific components of the amounts agreed to are necessarily not specified within the Settlement, just as they would not have been had OCA been a signatory to the Settlement. As explained above, this Commission has expressed its approval for black box settlements. In addition, the residential customer charges agreed to within the Settlement are just and reasonable. Although, as with many aspects of this black box Settlement, the specifics of what makes up the customer charge are not identified within the Settlement, the customer charge is exactly what was proposed by I&E in testimony. I&E would, thereby, submit that there exists ample record evidence to support the adoption on the residential customer charges.

**4. Reply to OCA Exception No. 7: The ALJ Appropriately Recommended Adoption of the Stormwater Rate Agreements Contained in the Settlement. (RD, p. 122-126).**

Regarding stormwater rates, per the Settlement Agreement, PAWC agreed to propose potential recovery and rate methodology options for stormwater costs of CSSs in its next general wastewater or combined water/wastewater base rate filing. The proposals are to include an analysis of the recovery of such stormwater costs through various methodologies including forms of separate stormwater rates, and a description of to whom the rates would apply. In addition, PAWC will also meet with interested parties at different intervals to discuss updates and potential cost recovery mechanisms under consideration.

In recommending adoption of the Settlement without modification, the ALJ recommended adoption of the stormwater portion of the Settlement.<sup>39</sup> OCA excepts to this recommendation because it does not require PAWC to proposed stormwater rates in its next filing.<sup>40</sup>

By way of background, a stormwater rate is designed to recover the cost of providing stormwater service and could be a flat rate, a rate based upon land area, a rate based upon impervious area, or some other factor usually associated with land area.<sup>41</sup> In testimony, I&E recommend the establishment of a stormwater rate because of the long-standing rate making principle of cost causation which dictates that the customers that cause a cost should be charged rates that recover those costs.

The Settlement provision is in the public interest because, while it does not necessarily require that PAWC establish a stormwater rate in the next proceeding, it acknowledges that there is a need to further explore this issue. I&E recognizes that the time between the current filing and PAWC's next filing may not be sufficient for the establishment of a stormwater rate. Further, there are other potential mechanisms apart from a stormwater rate that might be appropriate for the recovery of these costs while still adhering to the principles of cost causation. In addition, it allows for the parties to meet and discuss these options between rate cases so that the parties have an opportunity to explore the various options in a less constrained timeframe that a base rate case affords. Therefore, I&E submits that this provision is in the public interest.

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<sup>39</sup> RD, p. 126.

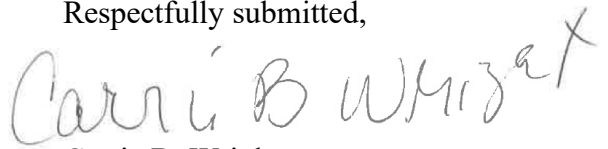
<sup>40</sup> OCA Exceptions, p. 24.

<sup>41</sup> I&E St. No. 5

### III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission deny the Exceptions of the Office of Consumer Advocate, the Office of Small Business Advocate, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and approve the Non-Unanimous Settlement in the instant proceeding without modification as recommended by Administrative Law Judge Conrad A. Johnson.

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

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Pennsylvania American Water Company	:		

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Exceptions** dated January 11, 2021, in the manner and upon the persons listed below:

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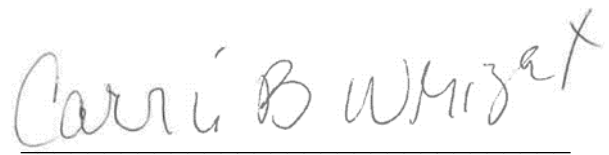
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