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January 11, 2021

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 please find the **Reply of Pennsylvania-American Water Company to Exceptions** (the "Reply Exceptions"), in the above referenced matters.

As evidenced by the enclosed Certificate of Service, copies of the Reply Exceptions are being served on Judge Conrad A. Johnson, the Office of Special Assistants, and all parties of record.

If you have any questions, please do not hesitate to contact me directly at 215.963.5384.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

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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 of Pennsylvania-American Water Company to Exceptions**, 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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Dated: January 11, 2021

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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 OF PENNSYLVANIA-AMERICAN WATER COMPANY
TO EXCEPTIONS**

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I. INTRODUCTION

On December 22, 2020, Administrative Law Judge Conrad A. Johnson (“ALJ”) issued his Recommended Decision (“R.D.”) recommending that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve the Joint Petition for Non-Unanimous Settlement (“Settlement”) of Pennsylvania-America Water Company’s (“PAWC’s” or “the Company’s”) base rate proceeding initiated on April 29, 2020. In its initial filing, PAWC requested approval for an increase in its total annual operating revenues of \$138.6 million over the two years of a proposed multi-year rate plan (“MYRP”) consisting of calendar years 2021 (“RY1”) and 2022 (“RY2”). Thereafter, the Settlement was executed by the Company, the Bureau of Investigation and Enforcement (“I&E”), and the Pennsylvania-American Water Large Users Group (“PAWLUG”), and was subsequently joined by PAWC customer AK Steel Corporation (“AK Steel”) (collectively, the “Joint Petitioners”).

The Settlement of this base rate proceeding – the Company’s first since 2017 – provides for a rate increase roughly half of what PAWC originally requested (\$70.5 million) that will be phased-in over two years, with substantial annual bill credits in those years that produce an annualized net increase in 2021 of only \$40 million. PAWC also agreed to withdraw its MYRP and accepted many of the opposing parties’ proposals, and will expand its assistance to low-income customers, including outreach to communities impacted by the COVID-19 emergency.

In his 131-page R.D., the ALJ determined that the Settlement was in the public interest and supported by substantial evidence after weighing the evidence and considering the competing arguments of the settling and non-settling parties.¹ In reaching his conclusion, the ALJ properly applied the law and emphasized the Settlement’s phased rate increase and the “robust

¹ R.D., p. 126.

commitments from PAWC to protect its customers amid the COVID-19 public health and economic crisis.”²

The Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) each filed Exceptions. For the most part, the Exceptions repackage arguments that were fully addressed in the Company’s Main Brief (“PAWC M.B.”) and Reply Brief (“PAWC R.B.”), as well as in the Company’s Reply to Comments on the Settlement (“PAWC Comments”), which the Commission is urged to review in light of the page limit on Reply Exceptions. This Reply will address only the key errors in the opposing parties’ Exceptions and their new contentions regarding the ALJ’s well-reasoned recommendation.

II. REPLIES TO EXCEPTIONS

A. The ALJ Applied The Appropriate Standard Of Review And Burden Of Proof For The Settlement (OCA Exc. 1 and OSBA Exc. 2; PAWC Comments, pp. 2-3)

The OCA argues that the ALJ applied the wrong standard to review the rates, terms and conditions of the Settlement. Seizing upon a single sentence in the R.D., the OCA alleges that the ALJ believed he was “bound” by Commission policy to approve the non-unanimous Settlement notwithstanding the objections of the non-settling parties.³

The OCA distorts the ALJ’s meaning by quoting this single sentence entirely out of context, as the ALJ plainly stated that his recommendation came only after “weighing the evidence and duly considering the competing arguments of the Settling and Non-Settling Parties.”⁴ The ALJ’s weighing of the evidence and consideration is fully documented in the fifty pages of the

² *Id.*

³ OCA Exc., p. 2. *See* R.D., p. 126.

⁴ R.D., p. 126.

Recommended Decision (R.D. pp. 36-86) containing careful analysis of the parties' positions and factual findings. The ALJ did not review the Settlement as if it were unanimous but addressed all of the contested issues and concluded the objections to the Settlement should be rejected.⁵

For its part, the OSBA argues that the total revenue requirement of \$70.5 million (which will not be fully effective until January 28, 2023) is a non-unanimous "black box" settlement and, as such, "there exists no substantial evidence in the evidentiary record to support the \$70.5 million revenue requirement agreed to . . ." and, therefore, the ALJ allegedly erred in finding that the Company met its burden of proof to demonstrate that the Settlement rates are just and reasonable.⁶ While the settling parties did not specifically delineate the adjustments that reduced the Company's claimed revenue requirement (\$138 million) to the settlement level (\$70.5 million), that kind of reconciliation is not necessary (nor has it ever previously been required) to determine the justness and reasonableness of settlement rates.

The ALJ's methodology and conclusions were entirely consistent with standards for reviewing non-unanimous settlements that the Commission concisely restated in approving a partial settlement and rate increase in the recent base rate proceeding of Philadelphia Gas Works:

In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest.* Finally, we recognize that Section 704 of the Administrative Agency Law requires that adjudications by the Commission must be supported by substantial evidence in the record.⁷

⁵ The OCA's contention (OCA Exc., p. 3) that the ALJ did not consider main extensions is incorrect, as explained in Section II.F.2. *infra*.

⁶ OCA Exc., pp. 3-4; OSBA Exc., pp. 5-6.

⁷ Opinion and Order, *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered Nov. 19, 2020), pp. 14-15 ("*PGW 2020*") (citations omitted, emphasis added).

The ALJ applied those same standards and found that the Company met its burden with substantial evidence to establish the justness and reasonableness of the rates agreed to in the Settlement.⁸

In short, the OCA's contention that the ALJ focused only on the Settlement while allegedly ignoring the "fuller arguments" made by in the non-settling parties' briefs is directly contradicted by the ALJ's detailed analysis of all the record evidence and of the non-settling parties' arguments, which the ALJ expressly referenced and incorporated in his ultimate conclusion.⁹ OSBA's claim that the \$70.5 million "black box" revenue requirement is not supported by substantial evidence was also explicitly considered and rejected by the ALJ after discussion of the many benefits of the Settlement and extensive findings of fact regarding the Company's rate base, revenues, expenses, and return on equity consistent with a fully contested case.¹⁰ The Company does not have the burden of proof to reconcile the Settlement rates with its originally proposed rates, but to show that the record evidence supports an increase at least as high as that reflected in the Settlement. The extensive evidence PAWC presented, and upon which the ALJ relied, satisfies that burden.

B. The Rate Increase In The Settlement Is Reasonable (OCA Exc. 1, OSBA Exc. 1, CAUSE-PA Exc. 1; PAWC M.B., pp. 7-10 and R.B., pp. 7-19)

In approving the Settlement, the ALJ noted that the Company was "keenly aware" that this case had taken place during the COVID-19 emergency, and reviewed the arguments of the OCA, OSBA, and CAUSE-PA against any rate increase which they now reiterate in their Exceptions.¹¹ The OCA relies on a theory of OCA witness Scott Rubin that the Commission can set utility rates based on general economic conditions in a "null" zone outside of the traditional ratemaking zone

⁸ *Id.*, p. 127.

⁹ *Id.*, p. 126. The OCA's assertion (OCA Exc., p. 3, n.1) that the "Recommendation" section of the R.D. is somehow limited to consideration of the Settlement and not the other arguments by the parties in their briefs is not consistent with the structure of the R.D., in which the "Recommendation" is set forth in its own, separate section (Section IX) following sections with the ALJ's extensive findings of fact and consideration of the Settlement.

¹⁰ *Id.*, pp. 40-49 and 50-56.

¹¹ *See* R.D., p. 124; pp. 89-127.

of reasonableness and calculate what rates are “reasonable for customers to pay.”¹² Similarly, CAUSE-PA argues for a new “affordability” test that appears to mirror Mr. Rubin’s theory, while the OSBA relies upon general statements about negative economic impacts and does not address the Company’s actual revenue requirements.¹³ The OCA also asserts that under a “business as usual ratemaking approach,” the recommended increase is unreasonable.¹⁴

The Commission has made clear that the COVID-19 pandemic does not preclude utility rate increases, and 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.”¹⁵ PAWC refuted the arguments of the OCA, OSBA and CAUSE-PA in its Main and Reply Briefs and Comments, and the Commission should reject each of the Exceptions for the principal reasons summarized below.

The Justifications for Rejecting the Settlement Are Inconsistent with Long-Standing Ratemaking Principles and Will Increase Harm to Customers. Under the approaches of the parties opposing the Settlement, a utility commission could determine 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).¹⁶ This is not how ratemaking is done, as former Commission Chair James H. Cawley explained on behalf of the Company at the evidentiary hearings:

Ratemaking methodology should be constant, not changing to reach a desired result in distressed economic conditions while remaining

¹² R.D., p. 38; OCA Exc., p. 9. The OCA invokes *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) and other case law to try to suggest that its approach is well-grounded (*see id.*, pp. 7-8), but the OCA already conceded in this proceeding that Mr. Rubin’s focus on establishing rates based on what customers can pay was “not the Commission’s standard approach to ratemaking.” *See* OCA M.B., p. 19. The general flaws in the OCA’s approach and the additional errors in its reliance on cases from the 1918 pandemic and the Great Depression are addressed in the Company’s Reply Brief. *See* PAWC R.B., pp. 13-17.

¹³ CAUSE-PA Exc., p. 5; OSBA Exc., p. 5.

¹⁴ OCA Exc., pp. 10-11.

¹⁵ *PGW 2020*, p. 64; *see also Pa. P.U.C. v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2019-3015162 (Oct. 8, 2020) (approving rate increase following prior rate increase in 2019).

¹⁶ PAWC R.B., p. 14; PAWC St. 14-R, p. 6.

“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. Patently impermissible and shortsighted, however, is reducing shareholder (or bondholder) returns below the otherwise appropriate level to subsidize customers of lesser means.¹⁷

Mr. Cawley also explained that 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:

If consistently reasonable, rational, and carefully balanced (between ratepayers and investors) ratemaking is abandoned by, for example, adopting one-sided measures like [the OCA’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. . . . [I]n 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.¹⁸

The “no increase” approach is particularly short-sighted in this proceeding. PAWC will have invested over \$1.64 billion between 2018 and the end of the fully projected future test year (“FPFTY”),¹⁹ and its projected capital expenditures will create significant economic benefits in the Commonwealth.²⁰

Expansion of PAWC Low-Income Programs Will Mitigate Necessary Rate Increases.

After consideration of all of the evidence, the ALJ concluded that the Settlement includes “robust commitments” from PAWC to protect its customers during the COVID-19 pandemic. The specific

¹⁷ PAWC St. 14-R, pp. 14-15.

¹⁸ *Id.*, pp. 12-13 (citing PAWC St. 2, pp. 5-12, 15-22, and 27-41).

¹⁹ R.D., p. 40.

²⁰ PAWC St. 15-R, pp. 20-21. The Company’s projected expenditures will total approximately \$460 million in each of 2021 and 2022 and support over 3,700 jobs in each of those years.

remaining objections of the OCA and CAUSE-PA to PAWC's programs are addressed in Section II.E.

PAWC's FPFTY Data Is Properly Considered. The OCA asserts that the Commission cannot rely on PAWC's FPFTY data in light of the COVID-19 pandemic.²¹ As noted above, the Commission has approved rate increases during the pandemic in which FPFTY data was used, and the OCA does not identify any component of PAWC's FPFTY that is actually unreliable.

The OCA's "Business as Usual" Calculations Are Flawed. The OCA asserts that, if its argument for no increase based on the pandemic is rejected, PAWC's rates should still not be increased based on return rates calculated by its witnesses. However, these calculations reflect *all* of its proposed adjustments to rate base, expenses and incomes taxes which, for reasons addressed in the Company's briefs and again in Section II.C, are inconsistent with Commission precedent and would result in an overall rate of return below the Company's cost of its long-term debt.²²

C. The ALJ Correctly Rejected The OCA's Proposed Adjustments To The Company's Revenue Requirements²³

1. Performance-Based Compensation (OCA Exc. 4; PAWC M.B., pp. 21-24 and R.B., pp. 26-29)

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

²¹ OCA Exc., p. 4; PAWC R.B., pp. 17-18.

²² R.D., pp. 95-96; PAWC Reply Comments, pp. 4-5.

²³ The OCA's witness, Mr. Smith, proposed the use of average rate base for RY1, even though RY1 becomes a conventional FPFTY if RY2 is eliminated as it would be under the terms of the Settlement. The ALJ found (R.D., pp. 41-42) that it is appropriate to calculate the Company's revenue requirement for RY1 based on PAWC's rate base as of December 31, 2021. The OCA did not except to the ALJ's recommendation, but asserts in its Exception No. 3 (pp. 11-12) that the ALJ "mischaracterized" its position in Finding of Fact No. 34 (p. 41) by stating that Mr. Smith contended that a year-end rate base is not appropriate for use with "any form of a FPFTY" and not solely in the context of a MYRP. PAWC does not oppose OCA Exception No. 3 to the extent the OCA seeks to clarify that Mr. Smith's position regarding the use of year-end rate base in other forms of FPFTY.

Performance Plan (“LTPP”).²⁴ No party disputed the reasonableness of the overall compensation levels. The OCA’s witness, Mr. Smith, proposed disallowances of one-half of PAWC’s expense claim for APP compensation and 100% of LTPP compensation to reflect the portion of employee performance compensation that, in his view, are based on financial performance metrics that purportedly benefit shareholders and not customers.²⁵

As the ALJ explained (R.D., p. 48), the PUC has declined on numerous occasions 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 performance compensation costs.²⁶ Notwithstanding the well-established precedent contrary to the OCA’s position, the OCA continues to press this issue by taking exception to the ALJ’s findings. The OCA’s position should be rejected.

Prior PUC decisions rejecting precisely the same proposals Mr. Smith advanced in this case – most recently in *UGI Electric 2018* – are directly on point.²⁷ Based on the 2007 PUC decision upon which it relies, the OCA would have the Commission believe that the APP and LTPP are not an integral part of the total compensation package necessary to compete for and retain qualified employees so that PAWC customers continue to receive safe and reliable service. As the ALJ found (R.D., p. 48), PAWC presented a detailed third-party compensation analysis

²⁴ PAWC R.B., p. 26; *see also* PAWC St. 6, pp. 6-17.

²⁵ *See* R.D., p. 48.

²⁶ *See, e.g., Pa. P.U.C. v. UGI Utils., Inc. – Elec. Div.*, Docket No. R-2017-2640058 (Opinion and Order entered Oct. 4, 2018) (“*UGI Electric 2018*”), pp. 73-74; *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012) (“*PPL Electric 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).

²⁷ The OCA Exceptions (pp. 13-14) also repeat Mr. Smith’s flawed argument (OCA St. 2, p. 77) 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. As Mr. Smith conceded, PAWC is required to expense stock options on its financial statements under GAAP (Accounting Standards Codification 718). Furthermore, it is not a valid 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 PUC recently allowed PPL Electric and UGI Electric to recover stock-based compensation even though it is a “non-cash” expense.

demonstrating that its total employee compensation, including performance compensation, is reasonable – the same evidence the PUC found to be determinative in *PPL 2012* and *UGI Electric 2018*.²⁸ Moreover, in contrast to the performance compensation plan at issue in *PGW 2007*,²⁹ safety, reliability and customer service are all metrics utilized in the APP for eligible employees.³⁰

2. Excess Accumulated Deferred Income Taxes (OCA Exc. 5; PAWC M.B., pp. 6, 17, 25-37 and PAWC R.B., pp. 5-6, 24, 30-36)

The OCA takes exception to the ALJ’s approval of Joint Petitioners’ proposal to amortize Excess Accumulated Deferred Income Taxes (“EADIT”) produced by the Tax Cuts and Jobs Act (“TCJA”) over a twenty year period.³¹ The OCA primarily contends, without merit, that (i) the Commission has discretion under the TCJA in determining the amortization period for all unprotected EADIT; (ii) its proposal to amortize unprotected EADIT over a period of three years is reasonable; and (iii) PAWC’s proposed amortization period is not supported by the record.

Although the TCJA does not prohibit the Commission from adopting the OCA’s three-year amortization period, doing so would be contrary to Commission precedent. Repair deductions are the vast majority (\$140 million) of PAWC’s EADIT that the OCA proposes to amortize over three years,³² and the OCA’s position is at odds with PUC-approved settlement terms requiring that tax-book timing differences attributable to repair deductions be normalized for ratemaking purposes.³³ In prior PAWC base rate cases, the OCA strongly supported normalizing repair-related deductions because doing so benefited customers.³⁴ Because PUC-approved settlement terms require the

²⁸ *Pa. P.U.C. v. Phila. Gas Works*, 2007 Pa. PUC LEXIS 45 (2007) (“*PGW 2007*”).

²⁹ *See* 2007 Pa. PUC LEXIS 45, at *71-*76.

³⁰ *See* PAWC M.B., pp. 23-24; PAWC R.B., p. 28. The OCA also relies on several out-of-state decisions, which were fully addressed in PAWC’s R.B. (pp. 27-28).

³¹ As the OCA acknowledges, PAWC originally proposed a forty-year amortization period and agreed to a shorter twenty-year amortization period in the Joint Settlement. *See* Settlement, ¶ 30.

³² PAWC Exhibit JRW-2R, p. 1 (“Repairs”). *See* PAWC M.B., pp. 6, 29-30; PAWC R.B., p. 30.

³³ PAWC St. 10-R, pp. 18-19. *See also* PAWC M.B., pp. 32-34; PAWC R.B., pp. 30-32.

³⁴ *Id.*

repairs component of PAWC's EADIT to be treated as subject to normalization,³⁵ that component of EADIT should be deemed "protected" for ratemaking purposes.³⁶ The OCA's position is also contrary its position in the PUC-approved settlement of Duquesne's 2018 base rate case.³⁷

The OCA's contention that PAWC's position is unsupported in the record is also without merit. PAWC witness Wilde provided extensive support for a twenty-year amortization period.³⁸ A three-year amortization period would provide customers with a temporary reduction in revenue requirement but, when amortization ends, would be followed by a large increase in revenue requirement (approximately \$116 million) from the amortization expiring and PAWC's need to replace the no-cost ADIT tax loan with funds at its pre-tax overall cost of capital.³⁹ The ALJ reasonably concluded that the Company's proposal was preferable to a short-term rate decrease followed by the steep rise in rates (i.e., the "yo-yo effect").⁴⁰

3. Rate of Return (OCA Exc. 6; PAWC M.B., pp. 37-49 and R.B., pp. 36-50)

a. Fair Rate of Return

There is no dispute that "[g]iven PAWC's capital needs, it is critically important that PAWC have access to sufficient capital on reasonable terms."⁴¹ As the ALJ found, the return on equity ("ROE") of 8.00% (water) and 8.05% (wastewater) recommended by OCA witness Aaron Rothschild were below the authorized returns for nearly all water and wastewater utilities in the

³⁵ See, Joint Petition for Settlement, Docket No. R-2011-2232243 (Paragraph 8.g.) ("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 [ADIT] as a reduction to PAWC's rate base.") See also 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.*

³⁶ See PAWC M.B., pp. 33-35; PAWC R.B., p. 31.

³⁷ *Pa. P.U.C. v. Duquesne Light Co.*, Docket No. R-2018-3000124 et al. (Opinion and Order entered Dec. 20, 2018), p. 42. See also PAWC St. 10, pp. 17-18; PAWC St. 10-R, p. 23; PAWC M.B., pp. 6, 35; PAWC R.B., pp. 31-32.

³⁸ PAWC St. 10-R, pp. 1-3, 11-24. See also PAWC M.B., pp. 25-37; PAWC R.B., pp. 30-36.

³⁹ Tr., pp. 766-768. See also PAWC R.B., p. 36.

⁴⁰ R.D., p. 51. The OCA also relies on several out-of-state decisions, which were fully addressed in PAWC's Reply Brief. See PAWC R.B., pp. 11-13.

⁴¹ R.D., p. 53.

United States over the last decade.⁴² The record also indisputably established that the Company's ROE witness, Ms. Ann Bulkley, carefully analyzed current market conditions and fully considered the effects of the COVID-19 pandemic on her proposed cost of equity of 10.8%.⁴³ In light of the PUC's approval of an authorized cost of equity of 9.90% for purposes of water and wastewater distribution system improvement ("DSIC") charges based on financial data during the COVID-19 pandemic, the OCA is reduced to arguing that the Commission's own ROE determinations above the OCA's recommendations are of "limited value."⁴⁴ The OCA's remaining objections to the Company's rate of return evidence are similarly without merit as discussed below, and the Commission should also reject this Exception.

b. Capital Structure

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 proxy group of water utilities used by OCA witness Rothschild. In contrast, Company witness Bulkley calculated the capital structure of PAWC's water operations using PAWC's actual debt issuances and sources of capital after removing wastewater-specific debt, resulting in a capital structure that the ALJ found was well within the range of Ms. Bulkley's proxy group of utilities.⁴⁵

The OCA asserts that the Commission should nevertheless accept Mr. Rothschild's hypothetical capital structure because of the inclusion of natural gas companies in Ms. Bulkley's proxy group.⁴⁶ But such an approach ignores the Commission's direction that the actual capital

⁴² OCA Exc. 18; R.D., p. 52.

⁴³ R.D., pp. 54-55.

⁴⁴ OCA Exc., p. 18 n.14.

⁴⁵ R.D., p. 52 (citing PAWC St. No. 13, pp. 76-77, describing Ms. Bulkley's capital structure calculations).

⁴⁶ OCA Exc., p. 19.

structure of a utility “represents the Company’s decision, in which it has full discretion, on how to capitalize its rate base,”⁴⁷ and “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.”⁴⁸ Moreover, Ms. Bulkley explained that natural gas utilities were properly included due to consolidation of utilities in the water industry, consistent with the decision of other commissions (as well as the OCA’s own position in a prior water base rate case proceeding).⁴⁹

c. Common Equity Cost Ratio

The ALJ agreed with Company witness Bulkley’s conclusion that the extreme volatility in capital markets as a result of the COVID-19 pandemic had led to high valuations of utility stocks and low dividend yields as investors moved into dividend paying stocks.⁵⁰ The OCA does not appear to dispute this, nor does the OCA appear to disagree with the concept that high utility stock valuations will result in lower DCF results. Instead, the OCA contends that the ALJ erred in accepting Ms. Bulkley’s conclusion that the DCF results were below normal market values as a result of these high valuations resulting from the pandemic and did not accurately reflect investor expectations.⁵¹ The Commission should reject the OCA’s argument. Ms. Bulkley prepared extensive analysis of market data and utility valuations in support of her conclusions that the ALJ directly cited for his conclusions, and the ALJ properly recognized that Mr. Rothschild’s DCF

⁴⁷ *PPL Electric 2012*, p. 68.

⁴⁸ *Id.*

⁴⁹ PAWC R.B., pp. 42-43. The OCA also objects to the ALJ’s finding that Mr. Rothschild did not explain the inconsistency in his willingness to accept the Company’s capital structure for its wastewater operations and his proposal to use a hypothetical capital structure for water operations. In support of its objection, the OCA is only able to cite a rationale proffered in its Reply Brief in this proceeding and does not identify any testimony by Mr. Rothschild. OCA Exc., p. 19.

⁵⁰ R.D., p. 54.

⁵¹ OCA Exc., p. 19.

results were inconsistent with virtually all other authorized ROEs.⁵²

Discounted Cash Flow. With respect to the ALJ's findings regarding the actual DCF results, the OCA asserts that the ALJ should have accepted Mr. Rothschild's DCF results even though his ROE calculation was at or near an all-time low.⁵³ But as the Company explained in its Reply Brief, the Commission has recognized that its preference for the DCF method 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 which, in this case, properly included additional weight to the properly calculated results of the CAPM model.⁵⁴ And despite the OCA's general criticism that Ms. Bulkley is purportedly over-reliant on analyst expectations and historic instead of market-based data, Mr. Rothschild's DCF calculation also relied upon the expectations and forecasts of analysts and historical earned returns.⁵⁵

Capital Asset Pricing Model (CAPM). The OCA restates its general assertion that Ms. Bulkley relied on analyst forecasts and not market data in her CAPM analysis. In fact, Ms. Bulkley used extensive market data as well as analyst information.⁵⁶

Expected Earnings Approach. The OCA also excepts to the ALJ's findings regarding the value of an Expected Earnings approach. As discussed in PAWC's M.B., Ms. Bulkley does not maintain that the Expected Earnings approach is market-derived, but that it does have value in

⁵² R.D., pp. 54-55. The OCA's objection (OCA Exc., pp. 19-20) to the ALJ's conclusion that the TCJA has had a negative effect on utility cash flows on the grounds that all utilities would be affected was similarly flawed; as Ms. Bulkley explained, credit rating agencies were monitoring the effects on individual utilities, including PAWC's parent. R.D., p. 54 (citing PAWC St. No. 13, pp. 29-36).

⁵³ OCA Exc., p. 21.

⁵⁴ PAWC R.B., pp. 46-47; R.D., pp. 54 & 58. The OCA's recounting of the disputes between Ms. Bulkley and Mr. Rothschild (OCA Exc., pp. 20-21) are also incorrect. Ms. Bulkley did, in fact, provide support for her criticism of Mr. Rothschild's use of retention growth rates (PAWC R.B., pp. 43-44 & OCA St. 13-R, pp. 70-75) and the OCA acknowledges that Mr. Rothschild did not use earnings growth rates in his DCF calculation. OCA Exc., p. 20.

⁵⁵ See PAWC St. 13-R, pp. 86-87.

⁵⁶ See PAWC St. 13-R, pp. 97-98.

providing a range of the expected returns on a group of risk comparable companies.⁵⁷ The OCA chose not to address this issue in its briefs before the ALJ, and its belated request for reconsideration should be rejected by the Commission.⁵⁸

d. Management Performance

While the ALJ did not make a specific finding of the amount by which the Company's ROE should be increased for management performance, the ALJ concluded that the Company had presented substantial evidence demonstrating "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."⁵⁹

The OCA's efforts to undermine the ALJ's conclusion are entirely unpersuasive. OCA cites to the testimony of Ms. Bulkley that COVID-19 has caused an increase in uncertainty in the market that exceeds the levels seen in the Great Recession of 2008-09, but that has nothing to do with PAWC's high level of performance in delivering utility service and does not refute the fact that the Commission has awarded increases in ROEs for management performance during challenging economic periods.⁶⁰ Similarly, the OCA's citations to the statements of its witnesses that purport to show substandard customer service entirely ignore the data presented by PAWC, which demonstrated a 23% decline in customer complaints and a 14% decline in payment arrangement requests.⁶¹ There was no need for the ALJ to determine a specific amount by which PAWC's ROE should be increased for management performance in light of the Settlement, but his

⁵⁷ PAWC M.B., pp. 47-48.

⁵⁸ PAWC R.B., p. 46.

⁵⁹ R.D., p. 57.

⁶⁰ R.D., p. 58; PAWC R.B., pp. 49-50.

⁶¹ PAWC St. 17-R, p. 11.

conclusion that PAWC had demonstrated excellent management performance provides additional support for the justness and reasonableness of the Settlement rates, as explained above.

D. The ALJ Correctly Found That The Rate Structure And Revenue Allocation Effected By The Settlement Is Reasonable

1. Stormwater Costs (OCA Exc. 7; PAWC M.B., p. 57 and R.B., p. 59)

PAWC submitted eight cost of service studies (two for water operations and six for wastewater operations) using well-accepted cost-of-service methodologies.⁶² The OCA's witness, Mr. Rubin, did not contest the study method for PAWC's combined sewer system ("CSS") operations, but disagreed with the way stormwater costs were allocated to rate classes. Therefore, Mr. Rubin proposed an "across-the-board" increase to the existing rates in PAWC's CSS rate areas and recommended that the Commission require PAWC to propose a separate stormwater rate in its next base rate case.⁶³

The OCA excepts to the ALJ's conclusion that the Settlement appropriately addresses Mr. Rubin's concerns because PAWC has not committed to seek approval in its next rate case of specific stormwater rates. This Exception should be dismissed for two principal reasons.

First, the OCA did not refute PAWC's evidence that the data collection and analysis needed to implement a separate system of stormwater rates for PAWC's CSSs would take much more time than Mr. Rubin erroneously assumed.⁶⁴ Second, the OCA and other parties are free to propose stormwater rates in the Company's next rate case based on the data PAWC assembles and its analysis of the feasibility of recovering stormwater costs through various methodologies.⁶⁵ The OCA has not furnished any valid reason why the Company's stormwater proposal in its next rate

⁶² PAWC St. 12, pp. 3-5.

⁶³ See R.D., p. 62.

⁶⁴ In fact, the examples of stormwater rates the Mr. Rubin relied upon were not for CSSs owned by regulated public utilities but, instead, for municipal separate storm sewer systems specifically designed and constructed solely for the purpose of collecting stormwater runoff only. See PAWC St. 3-R, pp. 4-6.

⁶⁵ See PAWC M.B., p. 57; PAWC R.B., p. 59.

case needs to include a request for Commission approval of specific rates and charges.

2. Revenue Allocation and Rate Design (OCA Exc. 8; OSBA Exc. 3; PAWC M.B., pp. 53-55 and R.B., pp. 54-58)

All issues pertaining to rate structure, rate design and the allocation of any revenue increase granted by the Commission have been resolved among the Joint Petitioners. As explained in PAWC's Comments,⁶⁶ the Settlement rates scale back PAWC's proposed volumetric charges for RY1 (2021) to achieve the target revenue percentage for each rate class as measured by the applicable cost of service study ("COSS") with one adjustment – specifically, the Settlement rates adopt the OSBA's proposed alternative for allocating wastewater and Steelton water revenue requirements to water customers in lieu of the individual class cost-of-service study results PAWC originally proposed.⁶⁷

The OCA claims that the ALJ's recommendation is not supported by substantial evidence because the proposed tariffs and proofs of revenues appended to the Joint Petition purportedly do not provide sufficient information to determine whether the Settlement rates are "just and reasonable."⁶⁸ There are at least two problems with the OCA's argument.

First, contrary to the OCA's assertions, the class revenues (total Company and by district) under PAWC's existing rates, proposed rates and the Settlement rates for 2021 can readily be derived from the record evidence.⁶⁹ As shown on Appendix A to PAWC's Comments, the Settlement rates substantially reflect the same class revenue allocation percentages and movement toward the cost of service for each classification in PAWC's original proposed rates for 2021. The OCA's vague and unsupported claim that the Joint Petitioners did not explain the basis for the rate

⁶⁶ See PAWC Comments, pp. 18-19 and Appendix A.

⁶⁷ PAWC R.B., p. 57.

⁶⁸ OCA Exc., pp. 25-26.

⁶⁹ See Schedule A of PAWC Exhibits CEH-1R and 12-B through 12-H and the Settlement proof of revenues (Appendix C to the Joint Petition).

structure and revenue allocation in the Settlement rates is contrary to the evidence and incorrect.

Second, PAWC addressed the OCA's alternative rate design proposals before the ALJ, explaining how the Settlement's rate structure achieves an appropriate balance among the competing interests of all customer classes and will allocate the revenue increase in a fair and reasonable fashion.⁷⁰ Notably, the Settlement rates reflect the PUC-endorsed goal of facilitating rate zone consolidation while producing reasonable movement toward the system average rate of return by the various customer classes, as measured by PAWC's COSS. OCA's discussion of this issue ignores the fact that many of Mr. Rubin's recommendations are reflected in the Settlement rates.⁷¹ The Commission should, therefore, affirm the ALJ's conclusion that the Settlement rates are "just, reasonable and in the public interest"⁷² and dismiss OCA Exception No. 8.

The OSBA did not take exception to the ALJ's recommendation that the PUC adopt the revenue allocation and rate structure reflected in the Settlement. However, the OSBA requests (OSBA Exc., pp. 6-7) that the PUC specifically determine that its witness proposed the correct method to allocate the wastewater and Steelton water revenue shortfall to water service classes and, in so doing, foreclose possible reconsideration of an alternative methodology in *future* rate cases. The OSBA's proposed allocation procedure was adopted for purposes of developing the Settlement rates and, therefore, the OSBA's contention is moot insofar as this case is concerned. Nonetheless, the OSBA's Exception No. 3 should be rejected because it is premature to decide now that the OSBA witness' methodology should be written in stone and never revisited in any future case regardless of how the facts may change.

⁷⁰ See PAWC R.B., pp. 54-57; PAWC Comments, pp. 18-21.

⁷¹ See PAWC M.B., pp. 55-57.

⁷² R.D., p. 129.

3. Combined Wastewater and Water Revenue Requirements (OCA Exc. 9)

The Settlement adopts PAWC's proposal to use Section 1311(c) to mitigate the impact of the agreed revenue increase on wastewater customers by recovering a portion of wastewater revenue requirement from PAWC's total water and wastewater customer base. The ALJ determined, based on substantial record evidence, that allocating \$29.3 million (Step 1) and \$21.5 million (Step 2)⁷³ of wastewater revenue requirement pursuant to Section 1311(c), as provided in the Settlement – in lieu of the \$32.9 million (RY1) and \$35.2 million (RY2) as PAWC originally proposed – is in the public interest. Thus, the ALJ determined that the Section 1311(c) allocation plays an important role in mitigating the increases to PAWC's 76,000 wastewater customers with only a modest effect on water customers' bills –approximately \$2.40 per month to an average residential customer. *See R.D.*, p. 60.

The OCA takes exception to the ALJ's finding and contends that the PUC should refuse to apply the plain language of Section 1311(c) to any portion of the wastewater revenue requirement allocated to water customers that relates to the fair market value increment of the price PAWC paid to acquire a wastewater system pursuant to Section 1329.⁷⁴ The OCA advocates keeping the reduction to wastewater rates without a corresponding increase to water revenue requirement and forcing shareholders to absorb the difference. Nothing in the statutory language of Section 1311(c) or Section 1329 furnishes a valid legal basis for such an unprecedented and facially confiscatory result.⁷⁵ To the contrary, Section 1329(c) expressly states that, when the PUC has approved a fair

⁷³ These allocations are annual, not cumulative, amounts. Therefore, the maximum allocation each year after the Step 2 will not exceed \$21.5 million.

⁷⁴ Under Section 1329, a public utility that pays more than depreciated original cost for a water or wastewater system owned by a municipal corporation or authority shall be permitted to include the lower of purchase price or average of two Utility Valuation ("UVE") appraisals (rather than net original cost) in its rate base pursuant to a Commission final order finding that the terms and conditions of Section 1329 have been satisfied.

⁷⁵ If adopted, the OCA's proposal would violate protections afforded by the Pennsylvania and Federal Constitutions against taking private property without compensation because it would force shareholders to commit investment capital to furnish safe and reliable service to the customers of the acquired wastewater systems while denying

market value purchase price that “ratemaking rate base . . . shall be incorporated into the rate base of the acquiring public utility during the acquiring public utility’s next base rate case.”⁷⁶ The PUC does not have legal authority to exclude from PAWC’s revenue requirement any portion of the “ratemaking rate base” of the Section 1329 acquisitions that underlie the OCA’s proposal. Nothing within the four corners of Section 1311(c) prohibits the PUC from authorizing a utility to allocate a portion of its wastewater revenue requirement to water customers simply because some of the allocation may relate to Section 1329 acquisitions.

Additionally, the OCA is promoting an erroneous interpretation of the “public interest” provision of Section 1311(c) that, if adopted, would unduly restrict the Commission’s discretion and directly contradict the PUC’s own prior holding that the “public interest” must consider impacts on “all affected parties.”⁷⁷ Applying Section 1311(c) in conjunction with 1329 is a reasonable way to make it economically feasible for larger, viable public utilities to acquire municipal water and wastewater systems without an undue impact on the rates of either the acquired systems’ customers or the public utility’s water customers. Moreover, curtailing the PUC’s discretion to apply Section 1311(c) as the OCA proposes would directly contravene the Commission’s policy of encouraging consolidation and regionalization.⁷⁸ The PUC should dismiss OCA Exception No. 9.

shareholders any compensation for the use of their funds. *See, Bluefield Water Works and Improvement Co. v. Pub. Serv. Comm’n of West Virginia*, 262 U.S. 679 (1923).

⁷⁶ It is uncontested that all of the wastewater acquisitions that are the subject of the OCA’s proposal were made pursuant to unappealed final orders of the Commission that found PAWC has complied with the terms of Section 1329 and, therefore, the lower of purchase price or average of two UVE appraisals (as modified by approved settlements), in each instance, constituted the “ratemaking rate base.”

⁷⁷ *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209 (Final Order entered Oct. 19, 2016) at 45.

⁷⁸ *See* PAWC St. No. 1 pp. 35-36.

E. The ALJ's Approval Of The Settlement's Low-Income Assistance Programs Was Reasonable And Supported By Substantial Evidence

1. H2O Program Design (OCA Exc. 10; CAUSE-PA Exc. 2; PAWC M.B., pp. 60-61 and R.B., p. 62)

Currently, for customers at or below 150% of the federal poverty level ("FPL"), PAWC provides an 85% service charge discount for water customers and a 20% total bill discount for wastewater customers.⁷⁹ The Company proposed granting low-income customers an additional 10% discount off the volumetric portion of their water bill and increasing wastewater bill discount to 30%.⁸⁰ The OCA and CAUSE-PA recommended that PAWC offer tiered discounts instead.

The ALJ properly recognized that PAWC is unable to implement a tiered discount program. The Company does not have the information needed to incorporate a tiered bill discount into its bill analysis and does not have a mechanism in place to obtain such information.⁸¹ It is unreasonable to suggest, as the OCA does,⁸² that because the Company obtains some data from customers, it can collect the data to implement a tiered-discount program. The affordability analyses on which CAUSE-PA's and the OCA's recommendations are premised are also flawed.⁸³

Neither the OCA nor CAUSE-PA demonstrated that PAWC's current discount, especially when coupled with the multitude of actions PAWC has volunteered to undertake, is inadequate or unreasonable. The ALJ was correct to decline to force the Company to adopt tiered discounts.

2. Expert Consultant (OCA Exc. 10; PAWC M.B., pp. 62-63, PAWC R.B., pp. 63-64)

There is no valid basis for the OCA's proposal to require PAWC to budget \$50,000 to hire

⁷⁹ PAWC St. 4, p. 46.

⁸⁰ PAWC M.B., p. 60. *See also* PAWC St. 4, pp. 46-47. PAWC disagrees with CAUSE-PA's characterization of the effectiveness of PAWC low-income programs in CAUSE-PA's Proposed Finding of Fact, ¶ 28.

⁸¹ PAWC St. 4-R, p. 15.

⁸² OCA Exc., p. 29.

⁸³ The OCA and CAUSE-PA over-estimate the number of low-income customers in PAWC's service territory and make no attempt to identify the actual number of customers in the different FPL categories to which their analyses apply, leaving their recommendations without accurate support. *See* PAWC St. 1-R, pp. 77-79.

an expert consultant.⁸⁴ The Company showed that it conducts extensive outreach⁸⁵ and maintains a dedicated internal position responsible for such outreach and communications.⁸⁶ The Company also accepted several of CAUSE-PA's recommendations regarding outreach, data collection and reporting, and establishing a low-income advisory group.⁸⁷ The OCA provided no evidence to show why an outside consultant is necessary. The ALJ's determination that a consultant is not required is therefore reasonable and supported by the record.

3. Universal Service Plan (CAUSE-PA Exc. 3; PAWC M.B., pp. 63-64 and R.B., p. 64)

CAUSE-PA advocated requiring PAWC to develop a Universal Service Plan ("USP") within one year of the effective date of a rate in this proceeding and submit to review and approval of a revised USP every five years thereafter.⁸⁸ Based on a careful review of the record, the ALJ properly rejected that proposal, and CAUSE-PA excepts to the ALJ's recommendation.

Under the terms of the Joint Petition and Stipulations entered into with other parties, PAWC agreed to form a low-income advisory group and agreed that, within three months of a final Order, it will initiate a PUC proceeding to consider whether to extend the "CAP Policy Statement" to PUC-regulated water and wastewater utilities.⁸⁹

As PAWC witness Cawley noted, the experience of the Commonwealth's electric and gas utilities has shown that USPs typically evolve over time after extensive PUC consideration of different approaches and the evaluation of the results of stakeholder collaboratives.⁹⁰ The ALJ correctly concluded that the proper forum for PAWC and stakeholders to refine the Company's

⁸⁴ OCA Exc., p. 29. *See also* OCA St. 4, pp. 4, 68-69.

⁸⁵ PAWC St. 17-R, p. 3.

⁸⁶ *Id.*, pp. 4, 8.

⁸⁷ *See* CAUSE-PA St. 1, pp. 51-52. *See also* Joint Petition ¶¶ 37, 41, 43, 48; CEO Stip. ¶¶ 7, 9, 10.

⁸⁸ CAUSE-PA. Exc., p. 13.

⁸⁹ *See* Joint Petition ¶¶ 37, 41, 43, 48; CEO Stip. ¶¶ 7, 9, 10.

⁹⁰ PAWC St. 14-R, p. 33.

low-income programs is through the efforts of the low-income advisory group, and that if necessary, the Commission can address a USP at a later time.

F. The ALJ Correctly Rejected The OCA's Additional Proposed Requirements Relating To Service Quality And Customer Service Issues

1. Performance Standards, Call Center Audits, Customer Satisfaction Surveys, Training Materials (OCA Exc. 11, 12, 13, 14; PAWC M.B., pp. 65-69 and R.B., pp. 65-68)

The OCA's rationale for imposing performance standards lacks merit. On the one hand, the OCA claims that the Company is providing deficient service and underperforming, but then, for almost half of the standards it recommends, the OCA asserts the Commission should impose standards consistent with PAWC's current performance levels or internal objectives.⁹¹ There is no evidence that, if the Commission declines to impose the OCA's recommended performance standards, there would be any degradation in the Company's service.

The OCA also provides scant support for its recommendation that the Commission require PAWC to perform regular audits of its out-of-state call centers, implement customer satisfaction surveys, and revise its training materials. Employees at PAWC's out-of-state call centers already receive the same Pennsylvania-specific training as employees in Pennsylvania, and PAWC monitors performance at its third-party call centers on a daily basis.⁹² Likewise, the OCA has not supported its recommendation to require PAWC to develop customer satisfaction surveys to mimic the methodologies allegedly used by Pennsylvania's electric and gas utilities. The Company's existing surveys provide a clear measurement of customer satisfaction, and the OCA has not established that adopting its recommended survey structure would benefit the Company or its customers.

⁹¹ See OCA St. 5SR, p. 6.

⁹² R.D., p. 72. See also PAWC M.B., pp. 66-67; PAWC R.B., pp. 66-67.

The OCA's recommendation that PAWC modify its training materials also seeks to remedy a problem that does not exist.⁹³ The OCA's recommendation would require PAWC to train field representatives to detect *any* condition that could conceivably pose some risk of harm from termination, which is impracticable and unreasonable. The ALJ properly rejected the OCA's recommendations and correctly determined that PAWC's performance standards, call center audits, customer satisfaction surveys, and training materials are reasonable and supported by the record.

2. High-Pressure Service, Main Extensions, Sewage Backups (OCA Exc. 15, 16, 17; PAWC M.B., pp. 69-71 and R.B., pp. 69-70)

As explained in PAWC's Main Br. (p. 69), PAWC only provides service greater than 125 psi in limited circumstances and, even then, always within the strict parameters of the Code.⁹⁴ If service in excess of 125 psi is required, the Company's tariff requires the customer to install and maintain a pressure regulator. Moreover, newer copper service lines are capable of withstanding pressures well in excess of 125 psi without causing any issues for customer service.⁹⁵

The OCA's exception regarding main extensions should also be denied. The OCA did not establish that the facts support an exception provided under Tariff Rule 27.1(F). The OCA's statement that PAWC did not provide any evidence to refute the facts supporting the OCA's recommendation is false and obfuscates that the OCA failed to prove that the proposed main extensions are warranted. The OCA's statement that the ALJ failed to adequately address this issue is also incorrect. The ALJ reasonably determined that the OCA had not established the facts necessary to support a Tariff Rule 27.1(F) exception.⁹⁶ Even in its Exceptions, the OCA only

⁹³ The OCA agrees with the Company's current field termination practices. *See* PAWC Response to OCA-XX-III-4; OCA St. 5, p. 11.

⁹⁴ PAWC M.B., p. 69; PAWC R.B., p. 69. *See also* 52 Pa. Code § 65.6.

⁹⁵ Tr., 639:3-25.

⁹⁶ R.D., p. 76 (Finding #208).

refers to “potential” additional customers in an attempt to apply Tariff Rule 27.1(F).⁹⁷ Further, PAWC should not be directed to construct a main extension to areas outside of its service territory, which would be the case for one of the proposed extensions.

The OCA’s exception regarding sewage backups is also without merit. The OCA seeks a directive requiring PAWC to ensure that implementation of its Long Term Control Plans (“LTCPs”) do not cause backups. PAWC will continue to minimize backups and implement its LTCPs in accordance with applicable regulations. The OCA’s request should be denied.⁹⁸

G. The ALJ Correctly Accepted The Company’s Revised Limitation Of Liability Tariff Provision (OCA Exc. 18; PAWC M.B., pp. 72-74 and R.B., pp. 70-71)

The ALJ properly approved PAWC’s proposed limitation of liability tariff provisions, which improve upon PAWC’s existing limitation of liability tariff provisions. The Company’s proposal harmonizes the limitation of liability provisions in its water and wastewater tariffs, makes PAWC’s limitations consistent with the tariffs of other water utilities, and limits liability under certain circumstances (*e.g.*, if a loss is caused for reasons beyond the Company’s control).⁹⁹ The OCA’s Exceptions seek to turn back the clock by arguing that a limitation of liability provision can *only* limit liability for cessations or terminations of service. This argument cannot be reconciled with PAWC’s existing tariff, which (like the PUC-approved limitation of liability provisions of many other utilities) protects the utility from liability in additional situations.¹⁰⁰

⁹⁷ OCA Exc., pp. 36-37. *See also* PAWC R.B. p. 69. The OCA’s statements that there *may* be additional customers and that additional sources of funding *could* be available are speculation, not “facts” and as such are not a valid basis to direct the Company to construct the requested main extensions.

⁹⁸ PAWC R.B., p. 70. The OCA would also require PAWC to provide information to its customers that have basements connected to combined sewers on options for eliminating sewage backups. The Company agreed to provide this information.

⁹⁹ *See* PAWC M.B., pp. 72-74; R.B., pp. 70-71. The OCA’s Exceptions, like its Main Brief, Reply Brief, and Comments on the Non-Unanimous Settlement, fail to provide any reason why the Company should be liable in the limited circumstances described in the Company’s proposed tariff. Instead, the OCA offers the fallacious argument that PAWC’s proposal constitutes an exculpatory clause that would allow the Company to escape liability in all cases.

¹⁰⁰ *See* PAWC Water Tariff, Rule 15.1 (explicitly limiting the liability of the Company “*for any loss or damages due to any negligent act*” of omission or commission by the Company). The OCA’s Exceptions come very close to asking the Commission to treat the Statement of Policy at 52 Pa. Code § 69.87 (“Tariff provisions that limit the liability of

The OCA opposes PAWC's proposed update of its limitation of liability tariff provisions *in its entirety* primarily because PAWC proposes limiting its liability for reckless and intentional acts in certain circumstances. Even if the Commission would agree with the OCA's rationale (which it should not), the Commission should reject the OCA's proposed remedy of rejecting the updated limitation of liability provisions *in their entirety*. Instead, the Commission should approve PAWC's proposal, which would give PAWC financial security by protecting it from unwarranted claims and allowing it to attract the capital necessary to invest in its systems and improve service.

III. CONCLUSION

For the reasons set forth above, the Commission should deny the Exceptions of the Office of Consumer Advocate, the Office of Small Business Advocate, and the Coalition for Affordable Utility Service and Energy Efficiency and adopt the Recommended Decision of Administrative Law Judge Conrad A. Johnson.

Respectfully submitted,



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utilities for injury or damage as a result of negligence or intentional torts") as a binding norm, rather than announcing the Commission's tentative intentions for the future.