



COMMONWEALTH OF PENNSYLVANIA

January 5, 2021

E-FILED

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

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

Dear Secretary Chiavetta:

Enclosed please find the Exceptions to the Recommended Decision issued December 22, 2020, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

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

Sincerely,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Commission’s Office of Special Assistants
Parties of Record

**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 :

**EXCEPTIONS TO THE RECOMMENDED DECISION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Erin K. Fure
Attorney ID No. 312245
Assistant Small Business Advocate

For: John R. Evans
Small Business Advocate

Commonwealth of Pennsylvania
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Date: January 5, 2021

I. Introduction

On April 29, 2020, Pennsylvania-American Water Company (“PAWC” or the “Company”) filed 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 to become effective on June 28, 2020. PAWC’s tariff filings sought approval of rates and rate changes which would increase total annual operating revenues of the Company by \$138.6 million over two years (\$92.4 million in 2021 and \$46.2 million in 2022).

On April 29, 2020, Jessica and Jeffrey Labarge filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019627). On April 30, 2020, Mr. and Mrs. Gerald S. Lepre, Jr. filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019646).

On May 1, 2020, State Representative Austin Davis filed a letter in opposition to PAWC’s filings. On May 5, 2020, State Senator Judith L. Schwank filed a letter in opposition to PAWC’s filings. On May 7, 2020, the Office of Consumer Advocate (“OCA”) filed its Notice of Appearance and Formal Complaint (docketed at Nos. C-2020-3019751 and C-2020-3019754). The Commission’s Bureau of Investigation and Enforcement (“I&E”) also filed its Notice of Appearance on May 7, 2020.

On May 11, 2020, the OSBA filed its Notices of Appearance and Formal Complaint (docketed at Nos. C-2020-3019767 and C-2020-3019772). On May 12, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene. On May 12, 2020, Victoria Lozinak filed a Complaint in opposition to PAWC’s filings (docketed at No. C-2020-3019778). The Commission on Economic Opportunity (“CEO”) filed a Petition to Intervene on May 18, 2020.

By Order entered May 21, 2020, the proposed 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 were suspended by operation of law until January 28, 2021. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed 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.

A PreHearing Conference Order and Notice were issued on May 22, 2020 scheduling a telephonic prehearing conference in this matter for June 4, 2020 before Administrative Law Judge (“ALJ”) Conrad A. Johnson.

On May 28, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Suspension Period of Pennsylvania-American Water Company’s Base Rate Proceedings. On June 1, 2020 CAUSE-PA filed an Answer in Support of the OCA’s motion.

On June 2, 2020, AK Steel Corporation (“AK Steel”) filed a Notice of Appearance, Petition to Intervene, and Motion for Admission Pro Hac Vice.

On June 3, 2020, the Pennsylvania-American Water Large Users Group (“PAWLUG”) filed a Complaint.

A telephonic PreHearing Conference was held on June 4, 2020, at which time the OCA’s motion was granted and a litigation schedule was determined. The litigation schedule was memorialized in an Order issued on June 15, 2020.

On June 18, 2020, PAWC filed Supplement No. 21 to Tariff Water-PA P.U.C. No. 5 and Supplement No. 21 to Tariff Wastewater-PA P.U.C. No. 16 further suspending the proposed rates’ effective date until March 15, 2021.

On June 24, 2020, PAWC filed a Petition for Reconsideration seeking reversal of the Order granting the OCA's motion to extend the statutory suspension period.

On July 6, 2020, the OCA and I&E filed Answers to the Petition. On July 8, 2020, CAUSE-PA filed an Answer to the Petition. On July 14, 2020, the OSBA filed an Answer to the Petition.

On August 20, 2020, the Commission issued an Opinion and Order, granting, in part and denying, in part, PAWC's Petition, and directing modification, if necessary, of the litigation schedule appearing in the ALJ's Prehearing Order issued on June 15, 2020.

Eight public input hearings were held over the course of August 18, 2020 and August 25 through 27, 2020.

On September 2, 2020, an Order was issued which modified the litigation schedule and rescheduled the evidentiary hearings for October 23, 26-29, 2020, starting at 9:30 a.m. each day.

On September 8, 2020, the OSBA submitted the direct testimony of Brian Kalcic.

On September 29, 2020, the OSBA submitted the rebuttal testimony of Brian Kalcic. On October 20, 2020, the OSBA submitted the surrebuttal testimony of Brian Kalcic.

The parties engaged in settlement discussions to try to achieve a resolution of some or all the issues in this case. On October 20, 2020, the parties jointly requested cancellation of the first day of the evidentiary hearings to facilitate settlement discussions. The ALJ granted the request to cancel the hearing and directed that the first day of evidentiary hearings would convene as a Second Prehearing Conference.

A Second Prehearing Conference was held on October 23, 2020. During the Second Prehearing Conference, a modified hearing schedule was decided, with the October 26, 2020 hearing date being cancelled but all remaining hearing dates continuing to be scheduled.

Evidentiary hearings were held before ALJ Johnson on October 27 and 28, 2020. At the October 27, 2020 hearing, the OSBA moved the testimony of its witness, Brian Kalcic, into the record.

On October 30, 2020, PAWC and CAUSE-PA filed a Joint Stipulation addressing the resolution of certain issues raised by CAUSE-PA in this proceeding.

On October 30, 2020, PAWC, I&E and PAWLUG filed a *Joint Petition for Non-Unanimous Settlement of Rate Investigation* (“*Non-Unanimous Settlement*”). AK Steel also joined in and supported the *Non-Unanimous Settlement*.

The OSBA submitted its Main Brief (“OSBA MB”) on November 10, 2020. Main briefs were also filed by PAWC, the OCA, CAUSE-PA, and CEO.

On November 13, 2020, PAWC and CEO filed a Joint Stipulation addressing the resolution of certain issues raised by CEO in this proceeding.

The OSBA submitted its Reply Brief (“OSBA RB”) on November 20, 2020. Reply briefs were also filed by PAWC, the OCA, and CAUSE-PA.

The OSBA, OCA, and CAUSE-PA submitted Comments to the *Non-Unanimous Settlement* on November 20, 2020. PAWC and I&E filed Reply Comments on November 30, 2020.

On December 22, 2020, ALJ Johnson issued his Recommended Decision (“RD”).

The OSBA submits the following Exceptions in response to the RD.

II. Exceptions

Exception No. 1: The ALJ erred in concluding that the rates in the *Non-Unanimous Settlement* are just, reasonable, and in the public interest. (RD, at 128)

Contrary to the ALJ's conclusion, increasing customer rates during a global pandemic that has demonstrably impacted the economy to the severe detriment of residential and small business ratepayers alike would be manifestly unreasonable and not in the public interest. (*See* OSBA Statement No. 1, at p. 5, 6; OCA Statement No. 1, at p. 3, 14-15, 18-19, Sch. SJR-10-SR). The Commission recognized the negative economic impacts of the COVID-19 pandemic on ratepayers in its October 13, 2020 Order issued at docket M-2020-3019244. (OSBA RB, at 8). Moreover, there is no evidence in the record to suggest that PAWC will no longer be able to serve its customers in a safe or reliable manner if the Company is denied a rate increase at this time. (OSBA RB, at 9). PAWC may renew its request for a rate increase after the economic crisis caused by COVID-19 subsides, and the economy recovers. (OSBA RB, at 9). However, increasing rates at a time when many customers are struggling financially, businesses are closing, and ratepayers are losing their livelihoods, would be neither just nor reasonable, and certainly not in the public interest.

Exception No. 2: The ALJ erred in concluding that PAWC met its burden of proof to show that the rates, rules and regulations in the *Non-Unanimous Settlement* are lawful, just, and reasonable. (RD, at 128)

“A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). There exists no substantial evidence in the evidentiary record to support the \$70.5 million revenue requirement agreed to in the *Non-Unanimous Settlement*. (OSBA Comments to *Non-Unanimous Settlement*, at 4). The \$70.5 million revenue requirement is a “black box” settlement. (RD, at 1, FN 1). Not all parties are signatories to the *Non-Unanimous Settlement*; in fact, only three parties (including the Company), are signatories to the

Non-Unanimous Settlement, while the majority of the parties to this case have not signed the *Non-Unanimous Settlement*.¹ As the \$70.5 million revenue increase is part of a “black box” settlement, there is no record evidence supporting that figure, nor is there any specificity in the record as to how that figure was reached, precluding the ALJ from making a finding that the \$70.5 million revenue increase is supported by substantial evidence. Furthermore, the parties that have abstained from signing the *Non-Unanimous Settlement* do not support the \$70.5 million revenue increase and do not agree that the \$70.5 million increase is lawful, just, and reasonable. In the absence of a unanimous agreement, and in the absence of any record evidence to support the \$70.5 million revenue increase, the ALJ’s conclusion that the Company has met its burden of proof to show that the rates in the *Non-Unanimous Settlement* are lawful, just and reasonable is erroneous.

Exception No. 3: The RD erred in failing to clarify the approval of the OSBA’s recommended method of allocating the Company’s unrecovered wastewater and Steelton revenue requirements to water customers. (RD, at 60-61).

The ALJ discussed the parties’ positions with respect to the magnitude of the proposed shift in revenue responsibility from the Company’s wastewater and Steelton ratepayers to its non-Steelton water service customers. (RD, at 60-61). However, as noted in the OSBA’s Main Brief, the OSBA also disagreed with the manner in which PAWC proposed to allocate such additional revenue responsibility to individual water service classes. PAWC originally proposed to allocate the revenue shortfall to water service classes based on the class cost-of-service results shown in the applicable wastewater and Steelton cost-of-service studies; however, that methodology was shown to be inconsistent with the method by which PAWC determined the

¹ The OSBA, OCA, CAUSE-PA, CEO and the numerous individuals who filed Complaints opposing the rate increase did not sign the *Non-Unanimous Settlement*. AK Steel joined in and supported the *Non-Unanimous Settlement*.

overall magnitude of the revenue shortfall. (OSBA MB, at 20). The OSBA recommended that PAWC should instead make each non-Steelton water service class responsible for an amount equal to the difference between (1) the corresponding class's total revenue requirement, i.e. total cost of service as measured by the applicable wastewater or Steelton cost-of-service study and (2) the proposed level of wastewater or Steelton class revenues, summed across PAWC's total wastewater and Steelton's operations. (OSBA MB, at 20).

No party challenged the OSBA's recommended allocation methodology after its introduction. The OSBA is requesting that the Commission, in its Final Decision, specifically identify that the OSBA's methodology is the correct method for allocating these costs to water service classes in order to preclude this issue from arising in future cases.

III. Conclusion

Wherefore, the OSBA respectfully requests that the Commission adopt the OSBA's Exceptions, as set forth above, and reject the Recommended Decision.

Respectfully submitted,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Dated: January 5, 2021

**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 true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Christine M. Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, Esq.
Harrison W. Breitman, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101
CHoover@paoca.org
EGannon@paoca.org
LGuerra@paoca.org
hbreitman@paoca.org

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
carwright@pa.gov
(*Counsel for BIE*)

Susan Simms Marsh, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
susan.marsh@amwater.com
(*Counsel for PAWC*)

Gerald S. Lepre, Jr.
3623 California Avenue
Pittsburgh, PA 15212
leprejrlaw@gmail.com

Richard A. Baudino
J. Kennedy & Associates
1347 Frye Road
Westfield, NC 27053
rbaudino@jkenn.com

The Honorable Conrad A. Johnson
Administrative Law Judge
Pennsylvania Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
cojohnson@pa.gov

Victoria Lozinak
609 Waterfall Way
Phoenixville, PA 19460
(First Class Mail Only)

Joseph L Vullo, Esquire
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jvullo@bvrrlaw.com

David F. Boehm, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com

Ria M. Pereira
John W. Sweet
Elizabeth R. Marx
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Jan K. Vroman
623 Eastman Street
West Mifflin, PA 15122
jan.vroman@yahoo.com

Jeffry Pollock
Billie S. LaConte
Kitty Turner
J. Pollock, Inc.
12647 Olive Boulevard, Suite 585
St. Louis, MO 63141
jcp@jpollockinc.com
bsl@jpollockinc.com
kat@jpollockinc.com

Judith L Schwank, Senator
Senate of Pennsylvania - 11th district
Senate box 203011
Harrisburg, PA 17120
(First Class Mail Only)

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurz@BKLLawfirm.com
kboehm@BKLLawfirm.com
jkylercohn@BKLLawfirm.com

Jessica and Jeffrey LaBarge
123 Fairmount Avenue
Reading, PA 19606
jessi@russolawllc.com

Rep Austin Davis
G-07 Irvis Office Building
Po Box 202035
Harrisburg Pa 17120-2035
(First Class Mail Only)

Kenneth M. Kulak, Esq.
Anthony C. Decusatis, Esq.
Brooke E. McGlinn, Esq.
Mark A. Lazaroff, Esq.
Morgan Lewis & Bockius, LLP
1701 Market Street,
Philadelphia, PA 19103
ken.kulak@morganlewis.com
anthony.decusatis@morganlewis.com
brooke.mcglinn@morganlewis.com
mark.lazaroff@morganlewis.com

Dan Grieser
Kilkenny Law LLC
519 Swede Street
Norristown, PA 19401
dan@skilkennylaw.com

Ahmed Rashed
6127 Galleon Dr
Mechanicsburg, PA 17050
amrashed@ship.edu

Charles and Jennifer Spryn
899 Bullcreek Rd Butler, PA 16002
sprynhouse@live.com

Adeolu A. Bakare, Esq.
Jo-Anne Thompson, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
abakare@mcneeslaw.com
jthompson@mcneeslaw.com

DATE: January 5, 2021

David P. Zambito, Esq.
Cozen O'Connor
17 North Second St Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245