**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held February 25, 2021

|  |  |
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|  |  |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman, Statement  John F. Coleman, Jr.  Ralph V. Yanora |  |

Pennsylvania Public Utility Commission : R-2020-3019369

: (Water)

Office of Consumer Advocate : C-2020-3019751

Office of Small Business Advocate : C-2020-3019767

Jessica and Jeffrey LaBarge : C-2020-3019627

Mr. and Mrs. Gerald S. Lepre, Jr. : C-2020-3019646

Victoria Lozinak : C-2020-3019778

Charles and Jennifer Spryn : C-2020-3019905

Cherise H. Sympson : C-2020-3020209

David Dollard : C-2020-3020219

Jan K. Vroman : C-2020-3020220

Pennsylvania-American Water Large User Group : C-2020-3020238

Anna-Maria Rucci : C-2020-3020245

West Norriton Township : C-2020-3020401

Andrew Wu : C-2020-3020497

Timothy Fuhrmann : C-2020-3020516

Terrence Reilley and Dorothy Reilley : C-2020-3020524

Ahmed Rashed : C-2020-3020546

Dennis Gore : C-2020-3020547

Bryan A. Stephen : C-2020-3020699

Sam Galdieri : C-2020-3020841

Robert D. and Maryann Reardon : C-2020-3020842

Maria Moceri : C-2020-3020843

Dennis Sweigart : C-2020-3020845

Anne Leithiser : C-2020-3020846

Sharon Higinbotham : C-2020-3020851

Diane Vottero : C-2020-3020852

Linda C. Denby : C-2020-3020887

Michael Palin : C-2020-3020888

Ron Bair, Jr. : C-2020-3020889

Michael Andrews : C-2020-3020892

Thomas Blakely : C-2020-3020893

Pamela Blakely : C-2020-3020894

Shannon Haig : C-2020-3020933

Randy and Sandra McKinley : C-2020-3020934

Timothy Peter Walsh : C-2020-3020935

Andrew D. Sproat : C-2020-3020936

John Norton : C-2020-3020937

Christopher Visco : C-2020-3020938

Tom E. Will : C-2020-3020939

East Norriton Township : C-2020-3021060

Robert Redinger, Jr. : C-2020-3021167

Leroy James Watters, III : C-2020-3021380

Gregory and Catherine Gannon : C-2020-3021381

Paul Trizonis : C-2020-3022050

:

v. :

:

Pennsylvania-American Water Company :

Pennsylvania Public Utility Commission : R-2010-3019371

: (Wastewater)

Office of Consumer Advocate : C-2020-3019754

Office of Small Business Advocate : C-2020-3019772

Jessica and Jeffrey LaBarge : C-2020-3019627

Mr. and Mrs. Gerald S. Lepre, Jr. : C-2020-3019646

William H. Rissmiller : C-2020-3020198

David Dollard : C-2020-3020219

Pennsylvania-American Water Large User Group : C-2020-3020240

Terrence Reilley and Dorothy Reilley : C-2020-3020524

Dennis Gore : C-2020-3020547

Hal H. Harris : C-2020-3020563

Svetlana Perminova and Viktor Ushenko : C-2020-3020829

Sam Galdieri : C-2020-3020841

Timothy Peter Walsh : C-2020-3020935

Christopher Visco : C-2020-3020938

Gregory and Catherine Gannon : C-2020-3021381

:

v. :

:

Pennsylvania-American Water Company :

**OPINION AND ORDER**

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Appendix E to the Joint Petition for Settlement (filed October 30, 2020)

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on December 23, 2020, relative to the above-captioned consolidated general rate increase proceedings initiated by Pennsylvania-American Water Company (PAWC or Company).[[1]](#footnote-2) Also, before the Commission are the Exceptions and the Replies to Exceptions filed with respect thereto.

Exceptions to the Recommended Decision were filed on January 5, 2021, by the following Parties: 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). On January 11, 2021, PAWC, the Commission on Energy Opportunities (CEO) and the Commission’s Bureau of Investigation and Enforcement (I&E) filed Replies to Exceptions.

Also, before the Commission is the Joint Petition for Non-Unanimous Settlement of Rate Investigation (Joint Petition, Joint Settlement or Settlement) of PAWC, I&E and the Pennsylvania-American Large Users Group (PAWLUG) and joined in and supported by AK Steel Corporation (AK Steel) (Joint Petitioners or Settling Parties), filed on October 30, 2020.

For the reasons stated, *infra*, we shall adopt the Parties’ Joint Petition, and approve the Settlement as in the public interest. Additionally, we shall: (1) grant, in part, and deny, in part, the Exceptions of the OCA; (2) deny the Exceptions of the OSBA and CAUSE-PA; and (3) adopt the ALJ’s Recommended Decision, as modified, consistent with this Opinion and Order.

As discussed *infra*, under the terms of the Settlement, the approved increase to PAWC’s annual operating revenues is proposed to be $70.5 million in two installments over the years of 2021 and 2022, to be offset by an annualized credit of $10.5 million in each of those years, which reflects a substantial decrease from PAWC’s original proposal for a $136.8 million rate increase over the two years of PAWC’s Multi-Year Rate Plan (MYRP). We conclude that the terms of the Settlement contain important provisions which, on balance, protect ratepayers and mitigate the rate increase at a time in which many ratepayers are suffering economic hardship due to the 2019 Coronavirus (COVID‑19) Pandemic emergency, while providing PAWC with a level of revenue to earn a sufficient return to ensure PAWC’s continued provision of safe and reliable water and wastewater service within the Commonwealth.

Therefore, based upon our review of the record, by our Order, we shall approve an annual revenue increase for the Company of $70.5 million in two installments over the years of 2021 and 2022, subject to the annualized credit of $10.5 million in each year, as reasonable and in the public interest.

# Background

PAWC provides jurisdictional water distribution services to approximately 740,000 customers in the service territory covering 36 counties across the Commonwealth of Pennsylvania. The Company is a public utility and jurisdictional water distribution and wastewater company as those terms are defined in the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 102.

As noted, *supra.*, under the terms of the Settlement, PAWC’s annual operating revenues are proposed to be $70.5 million in two installments over the years of 2021 and 2022, to be offset by an annualized credit of $10.5 million in each of those years, which reflects a substantial decrease from PAWC’s original proposal of a $136.8 million increase over the two years of PAWC’s MYRP.

PAWC asserts that the requested rate increase reflects the business challenges the Company currently faces, including, required investments in the repair/replacement or improvement of its distribution systems, including acquired troubled water utilities’ distribution system; and the high costs associated with maintaining a distribution system necessary to provide safe and reliable water and wastewater service within the Commonwealth.

# History of Proceeding

On April 29, 2020, the Company filed with the Commission Supplement No. 19 to Tariff Water – Pa. P.U.C. No. 5 (Water Tariff Supplement) and Supplement No. 19 to Tariff Wastewater – Pa. P.U.C. No. 16 (Wastewater Tariff Supplement) to become effective on June 28, 2020. PAWC’s supporting financial data for the Water Tariff Supplement and Wastewater Tariff Supplement reflected an increase in total annual operating revenues of $138.6 million over the two years of the Company’s proposed MYRP consisting of calendar years 2021 (Rate Year 1) and 2022 (Rate Year 2).

PAWC’s original proposed increase in Rate Year 1 was $92.4 million, or 12.9%, over PAWC’s annualized total Company Rate Year 1 revenues at present rates. This proposed increase included Distribution System Improvement Charge (DSIC) revenue. The proposed increase in Rate Year 2 was $46.2 million, or 5.8% over PAWC’s annualized total Company Rate Year 2 revenues at proposed Rate Year 1 rates. In support of the proposed increase, PAWC submitted the prepared direct testimony of thirteen initial witnesses, and their respective sponsored exhibits.

This rate proceeding was conducted in accordance with Governor Wolf’s March 6, 2020, Proclamation of Disaster Emergency in response to the COVID-19 Pandemic emergency (Executive Order). On March 15, 2020, Pennsylvania’s Deputy Secretary for Human Resources and Management issued an Executive Order implementing protocols for remote telework for state offices in Dauphin County and the Capital Complex, including the Commission’s offices for a period of at least fourteen days, beginning March 16, 2020. On March 16, 2020, the Governor’s office issued an order closing all businesses that are not life sustaining.

Further, this proceeding was conducted in accordance with the Commission’s March 20, 2020, Emergency Order to furnish guidance on the conduct of Commission proceedings during the pendency of the COVID-19 emergency. *Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Emergency Order*, M-2020-3019262 (March 20, 2020) (PUC Emergency Order). The PUC’s Emergency Order adopted broader electronic filing practices and ceased paper service on the Commission or by the Commission on others for the duration of the emergency.

On May 7, 2020, the OCA filed formal Complaints, Public Statements, and Notices of Appearances. On May 7, 2020, I&E entered a Notice of Appearance. On May 11, 2020, the OSBA filed a formal Complaint. Formal Complaints were also filed by the following parties on the dates specified and elected active party status[[2]](#footnote-3): Jessica and Jeffrey LaBarge (April 29, 2020), Charles and Jennifer Spryn (May 26, 2020), Jan K. Vroman (June 3, 2020), PAWLUG (June 4, 2020), and West Norriton Township (June 17, 2020).

Petitions to Intervene were filed by the following Parties: the CAUSE-PA’s on May 12, 2020; the CEO’s on May 18, 2020; and AK Steel’s on June 6, 2020.

By Order entered May 21, 2020, pursuant to 66 Pa. C.S. § 1308(d) (Suspension Order), the Commission instituted a formal investigation at Docket Nos. R‑2020-3019369 (Water) and R-2020-3019371 (Wastewater) to determine the lawfulness, justness and reasonableness of the Company’s existing and proposed rates, rules and regulations. Per the Suspension Order, the Water Tariff Supplement and Wastewater Tariff Supplement were suspended, by operation of law until January 28, 2021, unless permitted by Commission order to become effective at an earlier date. The matter was assigned to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

PAWC filed timely Answers denying the material averments of all Complaints. On May 28, 2020, the Company notified the ALJ and the Parties that it would rely upon 52 Pa. Code § 5.61(d), which provides that answers to the Complaints docketed in the Commission-instituted investigations of rates are not required except as directed by the Commission or presiding officer.

On May 22, 2020, the Commission issued a Notice to the Parties informing them the proceedings were assigned to ALJ Johnson, and that a telephonic Prehearing Conference was scheduled for June 4, 2020.

On May 28, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Period of Pennsylvania-American Water Company’s Base Rate Proceeding (OCA Motion), invoking the Executive Order and PUC Emergency Order as the basis for seeking a 45-day extension of the statutory suspension period in this case. Answers supporting the OCA Motion were filed by I&E and CAUSE-PA.

On June 3, 2020, PAWC filed a Petition for Protective Order and a Petition for Consolidation of the water and wastewater base rate proceedings at Docket Nos. R‑2020-3019369 and R-2020-3019371. No Party objected to PAWC’s Petition for Consolidation.

A telephonic Prehearing Conference was held on June 4, 2020. Chief Administrative Law Judge Charles E. Rainey, Jr. (CALJ) attended for purposes of hearing oral argument on the OCA’s Motion. The CALJ’s Order granting the Motion was issued and served on June 4, 2020 (*Extension Order*). In addition, a schedule was adopted whereby all case-in-chief, rebuttal and surrebuttal testimony would be submitted in writing in advance of hearings. As memorialized in the Prehearing Order issued by the ALJ on June 15, 2020, virtual evidentiary hearings were scheduled for November 2‑6, 2020, at which all testimony and exhibits would be placed on the record and all witnesses presented for oral rejoinder and for any cross-examination.[[3]](#footnote-4)

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

On June 24, 2020, PAWC filed a Petition for Reconsideration of Staff Action seeking reversal of the CALJ’s June 4, 2020 Order (Petition for Reconsideration). I&E, the OCA, the OSBA and the CAUSE-PA filed Answers to PAWC’s Petition for Reconsideration.

On August 5, 2020, a Secretarial Letter was issued directing the Parties to address questions raised by Commissioner Ralph V. Yanora concerning utility practices to prevent cross connections and back-flow. On September 4, 2020, the Company submitted a written statement of supplemental direct testimony to address the questions presented by the Secretarial Letter. R.D. at Appendix A at 133

Eight virtual Public Input Hearings were scheduled and held on August 18, 2020 (12 P.M. and 6 P.M.); August 25, 2020 (1:00 P.M. and 6:00 P.M.); August 26, 2020 (1:00 P.M. and 6:00 P.M.); August 27, 2020 (1:00 P.M. and 6:00 P.M.), per Notice issued July 21, 2020.

On August 20, 2020, the Commission entered an Opinion and Order granting, in part, and denying, in part, PAWC’s Petition for Reconsideration *(August 2020 Order).* In the *August 2020 Order*, the Commission granted the OCA’s request to extend the effective date of new rates to March 15, 2021 – 45 days beyond the statutory suspension period – subject to allowing the Company to recoup revenues that might be lost during that interval. The Commission also noted that sufficient time was needed to consider and rule upon the Recommended Decision to be issued in this proceeding before the last public meeting prior to the expiration of the suspension date. Accordingly, the Commission established a deadline of December 24, 2020 for the issuance of the Recommended Decision and directed the ALJ to modify, if necessary, the litigation schedule established in the Prehearing Order.

On September 2, 2020, the ALJ issued the Second Interim Order Modifying Litigation Schedule (*Second Interim Order*), which revised the schedule for the submission of written testimony and evidentiary hearings in accordance with the *August 2020 Order.* The Second Interim Order rescheduled the evidentiary hearings for October 23, 26-29, 2020.

On September 8, 2020, AK Steel, the CAUSE-PA, the CEO, I&E, the OCA, the OSBA, and the PAWLUG submitted a total of 18 written statements of direct testimony and accompanying exhibits. On September 29, 2020, PAWC, I&E, the OSBA, and PAWLUG submitted a total of 19 written statements of rebuttal testimony with accompanying exhibits. On October 20, 2020, AK Steel, the CAUSE-PA, I&E, the OCA, the OSBA, and the PAWLUG submitted a total of 17 written statements of surrebuttal testimony with accompanying exhibits. On October 22, 2020, PAWC submitted an Oral Rejoinder Outline for seven witnesses.

At the Second Prehearing Conference held on October 23, 2020, the Company notified the ALJ of the Settlement and explained that the Company was continuing negotiations with the remaining Parties that did not join the Settlement to narrow the outstanding issues for litigation in this case. The Parties also notified the ALJ that all Parties had waived cross-examination, subject to the right to cross-examine Company witnesses on their rejoinder testimony. The ALJ directed the Company to file the Settlement on October 30, 2020 and established a deadline for the submission of responses in opposition to the Settlement by November 20, 2020.

On October 26, 2020, the Company supplemented its Oral Rejoinder Outline by serving two written statements of rejoinder testimony in advance of the first evidentiary hearing. R.D. at 10.

Virtual evidentiary hearings were held on October 27-28, 2020. At the hearings, PAWC witnesses Bruce W. Aiton, Ashley E. Everette, John R. Wilde, Tawana Dean and Preston Pallas presented oral rejoinder testimony and were cross-examined by counsel for other parties. PAWC witness James H. Cawley, was made available for cross-examination, and was questioned by the ALJ. The written testimony and exhibits of all parties were admitted into evidence.[[4]](#footnote-5)

At the October 28 hearing, the ALJ granted PAWC’s request to reply to any responses to the Settlement filed by other Parties on November 30, 2020 and leave to file Appendices to the Settlement on November 6, 2020.

On October 30, 2020, PAWC, I&E and the PAWLUG filed the Joint Petition seeking approval of Settlement, together with: Appendices D (Summary of Revenue Increase) and E (Amortizations); Statement A (PAWC Statement in Support); and Statement B (I&E Statement in Support).

Also, on October 30, 2020, PAWC and the CAUSE-PA filed a Joint Stipulation (CAUSE-PA Stipulation 1) addressing issues raised by the CAUSE-PA in this proceeding.

On November 2, 2020 AK Steel filed a Statement in Support of Settlement and joined the Settlement. On November 3, 2020, PAWLUG, a Joint Petitioner, filed its Statement in Support of Settlement. *See* Statement C (PAWLUG Statement in Support).

By Order entered November 5, 2020, the ALJ directed that any comments or objections to the proposed Settlement be filed by November 20, 2020 and any replies to the comments or objections to the Settlement be filed by November 30, 2020.

On November 6, 2020, PAWC filed the additional Appendices to the Settlement, including: Proposed Water Tariff (Appendix A); Proposed Wastewater Tariff (Appendix B); Proof of Revenues (Appendix C); Distribution System Improvement Charge (DSIC) – Total Aggregate Plant Costs (Appendix F); Bill Comparisons (Water) (Appendix G); Bill Comparisons (Wastewater) (Appendix H).

On November 10, 2020, the CAUSE-PA, the CEO, the OSBA, and PAWC filed Main Briefs. Pursuant to an extension, the OCA filed its Main Brief on November 18, 2020. Reply Briefs were filed by the OCA on November 19, 2020 and by the OSBA, CAUSE-PA, and PAWC on November 20, 2020.

On November 13, 2020, PAWC and the CEO filed a Joint Stipulation (CEO Stipulation) addressing issued raised by the CEO in this proceeding. Also, on November 13, 2020, PAWC filed a second Stipulation between PAWC and the CAUSE‑PA (CAUSE-PA Stipulation 2).

On November 20, 2020, the CAUSE-PA, the OCA, and the OSBA filed Objections to the Settlement. On November 30, 2020, PAWC and I&E filed Comments in reply to the objections of the OCA, the OSBA and the CAUSE-PA.

On December 22, 2020, the ALJ issued the Recommended Decision that the Joint Petition be approved as it was supported by substantial evidence and in the public interest, and that PAWC be authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, to produce an increase in operating revenues of $70.5 million (based on pro forma present rate revenues) to become effective as of January 28, 2021, subject to mitigation measures. Specifically, the increase of $70.5 million will be phased-in over two years and offset by annualized credits of $10.5 million in each of the years 2021 and 2022.

As previously noted, the OCA, the OSBA and the CAUSE-PA filed Exceptions on January 5, 2021. PAWC, CEO and I&E filed Replies to Exceptions on January 11, 2021.

# Legal Standards

In deciding this or any other general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), certain general principles always apply. A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. PUC v.* *Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975). In determining a fair rate of return, the Commission is guided by the criteria provided by the United States Supreme Court in the landmark cases of *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679 (1923) *(Bluefield)* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) *(Hope Natural Gas)*. In *Bluefield*, the 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.

*Bluefield*, 262 U.S. at 692-693.

Section 1301(a) of the Code mandates that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.” 66 Pa. C.S. § 1301(a). Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers [,] as well as a reasonable rate of return on its investment.” *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). There is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

The burden of proof to establish the justness and reasonableness of every element of a public utility’s rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. The standard to be met by the public utility is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), as follows:

**Reasonableness of rates.** – In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

In reviewing Section 315(a) of the Code, the Pennsylvania Commonwealth Court interpreted a public utility’s burden of proof in a rate proceeding as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial*.

*Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility’s burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company’s filing. The Pennsylvania Supreme Court has held:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

*Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955).

This does not mean, however, that in proving that its proposed rates are just and reasonable, a public utility must affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Pennsylvania Commonwealth Court has held:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted). *See also, Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

Additionally, Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments,[[5]](#footnote-6) the burden of proof must be on the party who proposes a rate increase beyond that sought by the utility. The mere rejection of evidence contrary to that adduced by the public utility is not an impermissible shifting of the evidentiary burden. *United States Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983).

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility’s property used and useful in the public service. The Commission determines a proper rate of return by calculating the utility’s capital structure and the cost of the different types of capital during the period in issue. The Commission is granted wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. PUC*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979) (determination of cost of capital is basically a matter of judgment which should be left to the regulatory agency and not disturbed absent an abuse of discretion).

# Discussion

As a preliminary matter, we note that any issue or exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see,* *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In the Recommended Decision, the ALJ reached 262 Findings of Fact and seven Conclusions of Law. R.D. at 36-86; 127-128. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

## A. Joint Petition for Settlement

### 1. Terms of the Settlement

The Settlement consists of the following terms and conditions, excerpted in relevant part:

1. **Revenue Requirement**

23. Upon the Commission’s approval of this Settlement, but no later than January 28, 2021 (see Paragraph 72 below), and the Company will be permitted to charge the rates for water service set forth in the proposed Water Tariff provided in Appendix A to this Settlement and the rates for wastewater service set forth in the proposed Wastewater Tariff provided in Appendix B (hereafter, the “Settlement Rates”).5 The Settlement Rates are designed to produce additional annual water and wastewater operating revenue of $70.5 million, as shown on the proof of revenues set forth in Appendix C to the Joint Petition. The $70.5 million increase will be offset by an annualized credit of $10.5 million in each of years 2021 and 2022 beginning on the effective date of Settlement Rates as shown on the summary of revenue increase appended hereto as Appendix D.

5 As previously noted, PAWC will file Appendices A-C on November 6, 2020.

1. The credit of $10.5 million is a negative surcharge to flow-back to customers all (“protected” and “unprotected”) excess accumulated deferred income taxes (“EADIT”) that the Company amortized and will amortize for financial reporting purposes during the period from January 1, 2018 through December 31, 2020. The EADIT amortized by PAWC for financial reporting purposes that are being flowed-back by the two-year $10.5 million credit were booked to reflect the effect on the Company’s accumulated deferred income taxes of the change in the federal corporate net income tax rate from 35% to 21% pursuant to the Tax Cuts and Jobs Act (“TCJA”) that became effective on January 1, 2018.
2. The total net increase will be implemented in two installments and the Settlement Rates are designed to produce: (1) a net increase of $40 million ($50.5 million increase in base rates less a $10.5 million credit) on the effective date of the Settlement Rates (“Step 1 Rate Increase”); and (2) a second installment effective on January 1, 2022 that increases base rates by $70.5 million, which will be off-set by a credit of $10.5 million, for a net total increase of $60 million for the twelve months ending December 31, 2022 (“Step 2 Rate Increase”). The credit will cease to apply on January 28, 2023.
3. The Settlement Rates are designed to produce: (1) approximately $766 million in total net annual combined water and wastewater revenue (including Other Revenue) during the period commencing on the effective date of the Settlement Rates; (2) approximately $786 million in total net annual combined water and wastewater revenue (including Other Revenue) during the period commencing January 1, 2022. An annualized credit of $10.5 million per 12-month period will apply for the first 24 months rates are in effect (January 28, 2021 through January 28, 2023) in the form of a negative surcharge to be applied equally to all classifications of water customers.6

6 The revenues to be produced under Settlement Rates will be shown in Appendix C, which will be filed on November 6, 2020. If any inconsistency exists between the revenues described in Paragraph 26 and the proof of revenues set forth in Appendix C, the latter shall take precedence.

1. The Joint Petitioners agree that the Company’s originally filed pro forma present rate revenue level has been used to establish the Settlement Rates.
2. In future rate filings, PAWC will submit one or more separate stormwater and wastewater cost-of-service studies for each of its combined sewer systems (“CSS”) currently consisting of McKeesport, Scranton and Kane and including any other CSS acquired by the time of each of the future rate filings. The Company is not required to provide a separate study for each combined stormwater system.

29. The Joint Petitioners acknowledge and agree that the depreciation rates set forth in PAWC Exhibit Nos. 11-C, 11-G, 11‑K, 11-O, 11-S, 11-W, 11-AA and 11-AD are appropriate for ratemaking purposes in this case for 2021 and that the Company will use such depreciation rates to calculate the depreciation expense it records on its regulated books of account.

30. The Joint Petitioners agree that the Settlement Rates reflect the amortizations set forth in Appendix E to the Joint Petition, including amortization of protected EADIT produced by the TCJA in accordance with the average rate assumption method and all unprotected EADIT produced by the TCJA over a period of 20 years.

31. The Company will not implement a DSIC during the calendar year ending December 31, 2021. The first DSIC in 2022 will be effective no earlier than April 1, 2022 based on DSIC-eligible expenditures during January and February 2022. In any event, the Company will not begin to impose a DSIC until the total net plant balances reach the levels established in this proceeding using the adjusted utility plant in service balances for December 31, 2021 as referenced in Appendix F. In compliance with the Supplemental Implementation Order entered on September 21, 2016 at Docket No. M-2012-2293611, the amounts shown in Appendix F constitute the baseline of gross plant balances to be achieved in order to restart charges under the Company’s DSIC.7

7 As previously noted, the Company will file Appendix F on November 6, 2020.

32. The Joint Petitioners agree and hereby stipulate that the Company shall use the rate of return on equity (“ROE”) as calculated for water utilities and published in the “Bureau of Technical Utilities Services Report on the Quarterly Earnings of Jurisdictional Utilities” for the most recent quarter for purposes of calculating the ROE component of the Company’s DSIC.

1. **Alternative Ratemaking Mechanisms**

33. PAWC agrees to withdraw: (1) the second year of its proposed MYRP, in its entirety; (2) its proposed Regionalization and Consolidation Surcharge; and (3) its proposal to implement a tracker and establish deferral accounts for its pension and other post-employment benefits expenses. This withdrawal is made without prejudice to propose these alternative ratemaking mechanisms in future proceedings.

**C. Customer Assistance Programs and COVID-19 Relief Provisions**

**(1) COVID-19 Relief Measures**

34. PAWC will waive reconnection fees for customers at or below 200% of the Federal Poverty Level (“FPL”) for one year from the date of the final Order in7this case and track the extraordinary, nonrecurring incremental COVID-19 related expense and shall maintain detailed accounting records of such expense.

1. PAWC will waive good faith payment requirement for PAWC’s H2O Help to Others Hardship Fund for one year from the date of the final Order in this proceeding.
2. PAWC will permit customers to self-certify income for purposes of qualifying for the PAWC’s H2O Help to Others Hardship Fund until the earlier of: (1) March 31, 2021; (2) the date on which the Executive Order is rescinded.
3. PAWC will expand community outreach to communities in need within PAWC service territories. This includes developing a community outreach plan to target communities significantly impacted as a result of the COVID-19 emergency. Through the newly formed low-income advisory group (see Paragraph 43 below), PAWC will seek input from interested parties and stakeholders to target areas with the most need. The community outreach plan will include an overall strategy and tactics to educate and enroll eligible and interested customers at or below 50% of the FPL.
4. The Company's annual contribution to its H20 Help to Others hardship grant program will be increased from its current level of $400,000 to $500,000 for water operations and from $50,000 to $100,000 for wastewater operations.
5. COVID-19 related financial impacts will be deferred and a regulatory asset established consistent with the Commission’s final Order on the Company’s petition filed on October 15, 2020.

**(2) PAWC’s Low-Income Programs**

1. PAWC will delete “To remain eligible for this rate, such customer must continually make timely payments on the discounted bills” from its water and wastewater tariffs.
2. PAWC will enhance its training materials and call scripts to specifically address how customers who call PAWC and the Customer Service Center indicating that they are having trouble paying their bills or are seeking financial assistance are directed to PAWC’s customer assistance programs.
3. PAWC will continue to promote charitable contributions and donations to its H2O Help to Others Hardship Fund and expand its outreach channels to include working with the low-income advisory group to identify new sources of funding for the Hardship Fund.
4. Within 90 days of a Commission’s final Order in this proceeding, PAWC will establish a low-income advisory group to include community-based organizations within the Company’s service territory, representative from the Commission’s Bureau of Consumer Services, interested stakeholders and interested parties in this case for the purpose of soliciting input to enhance the H2O Help to Others Program. The group will meet on a quarterly basis, with the first meeting of the advisory group to be held within 90 days of a Commission’s final Order in this proceeding.
5. PAWC agrees to request that the Commission, as part of the approval of this Settlement, initiate a proceeding to consider whether to extend the “CAP Policy Statement” to PUC-regulated water and wastewater utilities within three months of the final Order in this proceeding.

**(3) Winter Moratorium**

45. PAWC will track low-income customers protected from winter moratorium termination as provided for under 52 Pa. Code §§ 56.100(a) and 56.251.

**(4) Discontinuance of Services to Leased Premises Act**

46. Within 60 days of a final Order in this proceeding, PAWC will create and implement a standard form that a landlord will submit, with a notarized signature, swearing under penalty of law that the unit is unoccupied, that will be used when a landlord requests voluntary discontinuance of service. PAWC will modify internal policies to incorporate all the voluntary discontinuance requirements of the Discontinuance of Services to Leases Premises Act (“DSLPA”).

47. PAWC will accept a driver’s license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant as acceptable identification to establish tenancy for purposes of the DSLPA.

48. PAWC will utilize the procedures under [66 Pa. C.S. § 1523] to require landlord ratepayers to provide the names and addresses of tenants of dwelling units and will notify those tenants of any impending termination in accordance with the DLSPA.

49. PAWC will revise its policies, procedures, and associated training materials, as follows:

1. To indicate that, if PAWC terminates service to tenant occupied landlord ratepayer units without providing correct notice under the DSLPA, PAWC will restore service, deliver the required notice, and provide the time required under DSLPA for the tenant to make payment.
2. To incorporate the voluntary [discontinuance] requirements of the DSLPA;
3. To ensure that tenants are not required to appear in person to demonstrate tenancy or exercise their rights under DSLPA.

**(5) Language Access**

1. PAWC will continue its review of customer communication materials and modify as necessary for compliance with Commission regulations at 52 Pa. Code § 56.201(b).
2. PAWC will provide written documents to customers in Spanish, if requested.
3. If a PAWC customer calls the Customer Service Center and requests correspondence in Spanish, the customer service representative (“CSR”) will code the system to automatically generate all customer correspondence going forward for that customer in Spanish.
4. PAWC will translate billing information into Spanish in compliance with 52 Pa. Code §56.201(b). PAWC will present the revised billing information to the low-income advisory group in advance of implementation and consider feedback from the advisory group in making its revisions.
5. PAWC will modify its termination notices to include information in Spanish directing Spanish-speaking customer to a number to call for information and translation assistance and Spanish language section of all termination notices will highlight that the document is a termination notice.
6. PAWC will revise its policies and procedures so that its CSRs will contact a third-party interpreter service upon encountering a customer with limited English proficiency.
7. PAWC will develop a language access plan with 180 days of the final Order in this matter, in consultation with the low-income advisory group.
8. PAWC will conduct a formal needs assessment to determine whether any of its water or wastewater rate zones are populated by 5% or more of individuals who speak a language other than English or Spanish. If so, PAWC will comply with the Commission’s regulations at 52 Pa. Code § 56.91(b)(17) with respect to that group.

**(6) Protection from Abuse Accounts**

1. PAWC will develop written policies and procedures related to domestic violence issues, which will include guidelines for reviewing other court orders that qualify for protections under Chapter 56 of the Commission’s regulations. PAWC will consult with the Pennsylvania Coalition Against Domestic Violence (“PCADV”) in developing these policies and procedures. In addition, PAWC will consult with members of its newly formed low-income advisory group on PAWC’s policies and procedures concerning victims of domestic violence.
2. PAWC will implement specific domestic abuse training for its Compliance and Customer Advocacy teams. Such trainings will be developed in consultation with PCADV.
3. PAWC will implement training for CSRs to increase their knowledge about the availability of additional protections for victims of domestic violence and to actively screen for and identify customers who may be exempt from Chapter 14 of the Public Utility Code. Such training documents will be developed in consultation with PCADV.
4. PAWC will develop scripts for CSRs to use when screening for potential domestic violence victims and for explaining the protections available to customers with PFAs [Protection from Abuse] and similar court orders.
5. PAWC will develop scripts and written guidance for its Compliance and Customer Advocacy teams to use when communicating with victims of domestic violence.
6. PAWC will conduct a review of its confidentiality procedure for information of customers with PFAs and similar court orders, and if necessary, enhance the process for protecting account information, including protections against access by a third party who is currently listed or was previously listed on the customer account.
7. PAWC will ensure training documents highlight the need for extra confidentiality protections for customers with PFAs and similar court orders.
8. PAWC will establish a dedicated group of individuals from the Compliance and Customer Advocacy teams, who will be responsible for consulting and communicating with customers with PFAs and similar court orders.
9. PAWC will establish a dedicated email address and fax for the submission of PFAs and applicable court orders, which will only be accessible to a limited number of PAWC employees.
10. PAWC will develop a fact sheet and other outreach materials that prominently highlight protections available to customers with PFA orders or other court orders with clear evidence of domestic violence. PAWC will share a draft of these materials with its low-income advisory group for input and feedback.

**(7) Tariff Changes**

1. The Joint Petitioners agree to the Company’s proposal for no-fee credit card and e-check payments.
2. The Company will revise tariffs to include the following: 1) the rights of certain vulnerable customers with a Protection from Abuse Order; 2) right to a payment arrangement with criteria for eligibility; 3) obligation to issue a written denial or service that includes reasons for denial or payment of prior debt and dispute process; and 4) termination notice procedures.
3. **Cost Allocation And Rate Design**
4. The Settlement Rates set forth in Appendix A reflect the Joint Petitioners’ agreement with regard to water rate structure, rate design and the distribution of the increase in revenues in this case, as follows:8
5. Under the Settlement Rates, Rate Zone 1 service charge for residential, commercial and municipal customers with 5/8-inch meters will be $17.00 per month (2021) and $17.50 per month (2022) in lieu of the $18.00 (2021) and $18.50 (2022) service charges proposed by the Company. The 5/8-inch service charge for the Industrial class in Rate Zone 1 under the Settlement Rates will be $25.40, and the same percentage increase will be applied for all other meter sizes.
6. The metered rates for all classes of customers in Rate Zone 2 (Nittany, Sutton Hills, All Seasons, Balsinger and Berry Hollow) have been consolidated with Rate Zone 1 under the Settlement Rates.
7. The Company currently has a separate Rate Zone 3 for its McEwensville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 3 have been equalized with Rate Zone 1.
8. The Company currently has a separate Rate Zone 4 for its Turbotville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 4 have been equalized with Rate Zone 1. Additionally, usage charges for the residential class in Rate Zone 4 have been equalized with Rate Zone 1 in 2022.

8 Subparagraphs a. - e. provide a general description of the water rate structure and water rate design incorporated in the Settlement Rates. While every effort has been made to ensure that the description is accurate, if any inconsistency exists between such description and the rates set forth in Appendix A, the latter shall take precedence.

1. The Company currently has a separate Rate Zone 5 for its Steelton Water Operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 5 have been increased.
2. Appendix G contains billing comparisons showing the impact on the bill of an average customer in each major general service rate class if the Settlement Rates are approved.9

71. The Settlement Rates set forth in Appendix B reflect the Joint Petitioners’ agreement with regard to wastewater rate structure, rate design and the distribution of the increase in revenues in this case, as follows.10

1. The Company currently has ten wastewater rate zones. Under the Settlement Rates, existing wastewater Rate Zone 4 and future Rate Zone 11 will be consolidated with wastewater Rate Zone 1. The other eight rates zones will consist of Rate Zone 2 (New Cumberland), Rate Zone 3 (Scranton), Rate Zone 5 (Franklin), Rate Zone 6 (McKeesport), Rate Zone 7 (Sadsbury), Rate Zone 8 (Turbotville), Rate Zone 9 (Exeter) and Rate Zone 10 (Kane).
2. Under the Settlement Rates, Rate Zones 1, 2, 4, 6, 8, and 9 service charge for the residential class will be $11.00 per month and the service charge for non-residential classes in Rate Zones 1, 2, 6 and 9 will be $27.50 per equivalent dwelling unit (“EDU”). The Settlement Rates for all classes of customers and classes of wastewater service for Rate Zones 1-6 and 8-10 are set forth in the applicable portions of the Wastewater Tariff attached as Appendix B.

9. As previously noted the Company will file Appendices G and H to the Joint Petition on November 6, 2020.

10 If any inconsistency exists between the information provided in subparagraphs a.-e. and the rates set forth in Appendix B, the latter shall take precedence.

1. Appendix H contains billing comparisons showing the impact on the bill of an average customer in each major rate class if the Settlement Rates are approved. Combined Water and Wastewater Revenue Requirement: Pursuant to Section 1311(c) of the Public Utility Code and the Commission’s Implementation Order in Docket No. R-2013-2355276, under the Settlement Rates a portion of the wastewater revenue requirement totaling $29,296,281 (Step 1 Rate Increase) and $21,480,685 (Step 2 Rate Increase) is being allocated to water customers, as shown in Appendix C, Water Operations Excluding Steelton).
2. Stormwater Rates: Under the Settlement, the Company agrees to propose potential recovery and rate methodology options for stormwater costs of combined sewer systems in its next general wastewater or combined water/wastewater base rate filing. The proposals will include an analysis of the recovery of such stormwater costs through various methodologies including forms of separate stormwater rates, and a description of the customers to whom the rates would apply. PAWC also agrees that, at intervals of approximately one year and two years after entry of the Commission’s final Order approving the Settlement in this proceeding, unless the Company files a wastewater or combined water/wastewater general base rate case prior to either of those times, it will meet with the parties to this case to provide progress updates and discuss potential cost recovery methods under consideration.

**E. Effective Date**

1. The Joint Petitioners agree to the implementation of the Settlement Rates on January 28, 2021, when the suspension period will expire. Upon the entry of a Commission Order approving this Joint Petition, the Company will be permitted to file a tariff for water service, in the form attached hereto as Appendix A, and a tariff for wastewater service, in the form attached hereto as Appendix B, reflecting the agreed-to additional operating revenue to become effective in two installments on January 28, 2021 and January 1, 2022, respectively. The Company’s proposed limitation of liability provisions, which are outlined in the direct and rebuttal testimony of PAWC witness Ashley Everette, have been reflected in the proposed tariffs for water service and wastewater service provided in Appendices A and B.
2. If Commission approval of this Settlement occurs after January 28, 2021, the Joint Petitioners agree that PAWC shall be entitled to recoup the revenue increase not billed from the effective date through the date of PUC approval of new rates in the manner set forth in the Commission’s final Order in this proceeding. The revenue increase not billed from the effective date through the date of PUC approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes.

**III. PUBLIC INTEREST CONSIDERATIONS**

1. PAWC, I&E and PAWLUG have each prepared Statements in Support identified as Statements A through D, respectively, setting forth the bases upon which they believe that the Settlement, including the Settlement Rates, is fair, just, reasonable, non-discriminatory, lawful and in the public interest.
2. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:

a. The Settlement provides for an increase in annual operating revenues of $70.5 million in two installments, which will be offset by an annualized credit of $10.5 million in each of years 2021 and 2022, in lieu of the $136.8 million increase over the two years of the MYRP PAWC originally requested.

1. The Settlement includes robust commitments from PAWC to protect its customers amid the COVID-19 public health and economic crisis.
2. The Settlement Rates will allocate the agreed upon combined water and wastewater revenue requirement to each rate zone and customer class in a manner that is reasonable in light of the rate structure/cost of service positions of the Joint Petitioners and implement Section 1311(c) of the Public Utility Code in a manner that is agreeable to the Joint Petitioners.
3. The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery, submitting testimony and engaging in in-depth discussions. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission’s rules and practices encouraging negotiated settlements (see 52 Pa. Code §§ 5.231, 69.391 and 69.401), and is supported by a substantial record.

Joint Petition at 8-22.

In addition to the specific terms to which the Joint Petitioners have agreed, the Joint Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Joint Settlement is conditioned upon the Commission’s approval of all of the terms and conditions contained therein without modification. The Joint Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Joint Settlement if the Commission should act to modify or reject the Joint Settlement. In addition, the Joint Petitioners asserted that although the Joint Settlement is proffered to settle the instant case, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners. Further, the Joint Petitioners submitted that the Settlement is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to in the Joint Settlement before us. Joint Petition at 22-23.

In support of the Joint Petition, the Joint Petitioners relied upon the evidentiary record submitted in support of the original proposed rate increase, including testimony and exhibits offered into the record in the proceeding, Appendix A-H to the Joint Petition, and the Statements in Support of the Joint Petition of PAWC, I&E and PAWLUG. *See* R.D. Appendix A (PAWC testimony and exhibits) at 132-14; Joint Petition Appendix A (Proposed Water Tariff); Appendix B (Proposed Wastewater Tariff); Appendix C (Proof of Revenues); Appendix D (Summary of Revenue Increase); Appendix E (Amortizations); Appendix F (Distribution System Improvement Charge (DSIC) – Total Aggregate Plant Costs); Appendix G (Bill Comparisons -Water); Appendix H (Bill Comparisons-Wastewater); Statement A (PAWC Statement in Support); Statement B (I&E Statement in Support); Statement C (PAWLUG Statement in Support).

The Joint Petitioners respectfully requested that the Commission (1) approve the Joint Settlement, including all terms and conditions thereof, consistent with the Appendices A-H; and (2) grant the PAWC permission to file the tariffs consistent with Appendices.

### 2. Position of the Parties

#### a. Statements in Support of the Joint Settlement

##### i. PAWC

As a signatory to the Joint Settlement, in its Statement in Support, PAWC asserted that as a general matter, absent rate relief, its financial position will jeopardize the Company’s ability to appropriately invest in infrastructure needed to assure safe and reliable water and wastewater service to its customers across the Commonwealth. PAWC Statement in Support at 15-35.

PAWC noted that the issues concerning the level of revenues was subject to extensive discovery and addressed at length in the Parties’ direct, rebuttal, surrebuttal and rejoinder testimony. The Company noted that the level of revenues was also the subject of intense negotiation for the terms of the Joint Settlement. Further, PAWC asserted that the Joint Settlement was a carefully balanced compromise of the Joint Petitioners and included the important consideration of the COVID Pandemic Emergency. PAWC also noted that all of the wastewater Joint Settlement Rates and resulting average customer bills would be higher absent the Section 1311(c) allocation of a portion of wastewater revenue requirement to water operations. PAWC Statement in Support at 1-9.

PAWC specifically noted that the Joint Settlement provides significant concession by PAWC, as well as important provisions to enhance customer assistance programs and COVID-19 relief. PAWC noted, under the Joint Settlement, PAWC will withdraw the second year of its proposed MYRP, its proposed Regionalization and Consolidation Surcharge (RCS), and its proposal to implement a Pension Tracker and instead establish deferral accounts for its pension and other post-employment benefit expenses. In addition, under the Joint Settlement, PAWC will implement several special provisions for low-income customers, which will enhance, *inter alia*,: (1) PAWC’s Low-Income Programs; (2) PAWC’s practices regarding the Winter Moratorium; (3), language access; and (4) its Protection from Abuse Accounts. PAWC Statement in Support at 11‑18.

PAWC asserted that the Joint Settlement’s revenue requirement provisions provide for Joint Settlement Rates that are consistent with the legal standards articulated in *Bluefield* and *Hope Natural Gas,* *supra*. PAWC, averred that the Joint Settlement Rates mitigate rate shock, while allowing the utility and its investors the opportunity to earn a fair return on investment and to obtain capital needed to meet the Company’s service obligations. Additionally, PAWC noted that the Joint Settlement Rates provide for reasonable progress in moving all major customer classes closer to their cost of service, consistent with the principles of gradualism. Further, PAWC noted that the Settlement is responsive to the economic hardship to utility customers caused by the ongoing COVID-19 Pandemic Emergency, by material enhancements to the programs aimed at priding economic assistance to customers facing financial difficulties, and, particularly, low-income customers. Accordingly, PAWC submitted that the Joint Settlement is in the public interest as it reflects the appropriate balance between PAWC’s interests in increased revenue to provide safe and reliable water and wastewater service at a reasonable rate of return, and its customers’ interests in safe and reliable water and wastewater service at affordable rates, as supported by the substantial evidence of record. PAWC Statement in Support at 8-11, 21-22.

##### ii. I&E

As a signatory to the Joint Settlement, in its Statement in Support, I&E asserted, that the rate increase under the proposed Joint Settlement represents a result that is within the range of likely outcomes if this case was fully litigated. According to I&E, this increase is appropriate and, when accompanied by other important provisions contained in the Joint Settlement, yields a result that is both just and reasonable and in the public interest. I&E specifically noted, *inter alia*, that its support for the Joint Settlement was predicated in large part upon PAWC’s agreement to withdraw the proposed RCS, and Pension Tracker. As explained by I&E’s witness, PAWC’s agreement to withdraw the RCS mechanism is a significant concession which allows the issue of recovery of increased return related to newly acquired systems to be examined in the more appropriate context of a base rate proceeding. With respect to PAWC’s withdrawal of the Pension Tracker, I&E asserted PAWC’s agreement to this term was crucial, as it removed the consideration of expenses which are non-extraordinary routine business expenses from this proceeding. I&E also supported the cost allocation and rate design agreed upon in the Joint Settlement. I&E submitted that PAWC’s rates move customers toward the cost-of-service rate in a reasonable manner. I&E Statement in Support at 15‑19.

I&E agrees with PAWC that the Joint Settlement strikes the appropriate balance between the Company’s interest and the interest of the customers and therefore, serves the public interest. Finally, I&E’s support was conditioned upon I&E’s conclusion that the rates and terms and conditions thereunder, serve to mitigate the economic hardship caused by increased rates at a time during which the Commonwealth is suffering through the COVID-19 Pandemic Emergency. I&E Statement in Support at 4-17.

##### iii. PAWLUG

As a signatory to the Joint Settlement, in its Statement in Support, the PAWLUG asserted that it concurred with all the reasons asserted by PAWC and I&E. Specifically, the PAWLUG supported I&E’s position on the importance of the PAWC’s agreement to withdraw the RCS and other alternative ratemaking mechanisms which would have resulted in unreasonable rate increases for the PAWLUG’s members. PAWWLUG Statement in Support at 8-9.

##### iv. AK Steel

AK Steel joined in the Joint Settlement. AK Steel’s Statement in Support of the Joint Settlement concurred in all the reasons offered in support of the Joint Settlement by PAWC, I&E and the PAWLUG. AK Steel Statement in Support at 1.

#### b. Objections to the Joint Settlement (Objections)

##### i. OCA

In its Objections, the OCA asserted that the Joint Settlement is not in the public interest and not supported by substantial evidence. As a general matter, the OCA asserted that no rate increase should be approved in these circumstances and, specifically, due to the dire economic impact of the COVID-19 Pandemic Emergency. With respect to the evidence presented, the OCA argued that the Joint Settlement fails to correlate the record evidence to the rate increase agreed to under the Joint Settlement. The OCA disputed the evidence relied upon by the Joint Petitioners and proposed that the OCA’s witnesses and exhibits presented a more credible view of the Company’s financial position, which did not demonstrate a need for a rate increase. The OCA asserted that approval of the Joint Settlement should be denied, as unsupported by substantial evidence and against the public interest. In addition, the OCA stressed that many service-related issues, raised by the OCA and in the Public Input Hearings, remain unresolved by the Joint Settlement. OCA Objections to Settlement at 1-13.

In the alternative, the OCA proposed that, should the Commission grant a rate increase by approving the Joint Settlement, the Commission should exercise its discretion to condition approval of the Joint Settlement upon PAWC’s compliance with the OCA’s proposals for action by PAWC regarding the unresolved issues related to quality of service and customer service. *Id*.

##### ii. OSBA

In its Objections, the OSBA, like the OCA, submitted that, as a general matter, no rate increase should be approved under the circumstances and, specifically, due to the dire economic impact of the COVID-19 Pandemic Emergency. While generally objecting to the Joint Settlement’s rate increase, the OSBA indicated its approval of PAWC’s agreement to withdraw the RCS and Pension Tracker, and other provisions agreed to by PAWC. Overall, however, the OSBA asserted that approval of the Joint Settlement is not in the best interest of small business customers or in the public interest. The OSBA argued that the Joint Settlement’s increased rates for commercial customers are not reasonable or supported by substantial evidence. The OSBA stated that the revenue allocation agreed upon in the Joint Settlement is inconsistent with that proposed by the testimony of the OSBA’s witness. OSBA Objections at 1-5.

##### iii. CAUSE-PA

In its Objections, the CAUSE-PA concurred with the OCA and the OSBA that, as a general matter, no rate increase should be approved in these circumstances and, specifically, due to the dire economic impact of the COVID-19 Pandemic Emergency. Overall, the CAUSE-PA asserted that approval of the Joint Settlement is not in the best interest of low-income customers or in the public interest. The CAUSE-PA argued that the Joint Settlement’s increased rates are not reasonable or supported by substantial evidence. Objections of CAUSE-PA at 1-14.

##### iv. CEO

Although the CEO did not file Objections to the Joint Petition, the CEO did argue in its Main Brief against approval of the Joint Petition. The CEO is opposed to its opposition to any rate increase at this time. Like the OCA, the OSBA and the CAUSE-PA, the CEO’s primary argument is that no rate increase is justified due to the economic hardship caused by the COVID-19 Pandemic Emergency. The CEO opined that no mitigation efforts will suffice to make a rate increase, of any kind, tolerable for PAWC’s low-income customers. CEO M.B. at 3.

### 3. ALJ’s Recommended Decision

The ALJ recommended adoption of the Joint Settlement. The ALJ’s analysis turned on: (1) a review of the substantial record evidence; (2) the positions of the Parties; (3) weighing, on balance, the Company’s interests in sufficient revenues for its continued provision of safe and reliable water and wastewater service and a reasonable rate of return; and (4) the interest of PAWC’s customers in safe and reliable water and wastewater service at affordable rates. In balancing these interests, the ALJ expressly considered that the Joint Settlement contemplated, and sought to mitigate the serious economic hardship many may suffer due to the COVID-19 Pandemic Emergency. The ALJ reviewed the Non-Unanimous Joint Petition under the standards applicable for the granting of a rate increase under the *Bluefield* and *Hope* *Natural Gas* decisions, as well as the Commission guidance for consideration of whether to approve a Settlement, as set forth in *Pa. PUC v. CS Water and Sewer Assocs*. Upon review, the ALJ concluded that the terms of the “black box” settlement were supported by substantial evidence and is in the public interest, and therefore, should be approved. R.D. at 122‑127.

### 4. Disposition

As set forth above and discussed in more detail in the Exceptions and Replies section below, having thoroughly reviewed PAWC’s rate filing, the supporting evidence of record, and the proposed rates in the Joint Settlement, we conclude that it is in the best interest of the public to approve the Joint Settlement. In taking this action, we concur with the Joint Petitioners and the ALJ that certain provisions of the Joint Settlement directly benefit PAWC’s customers, particularly low-income customers, and help manage the cost of water and wastewater utility service during this time of COVID‑19 emergency. Among those provisions are: (1) the reduced revenue increase of nearly 50% less than the Company’s original request; (2) the reduced wastewater revenue requirement allocated to the Company’s water operation’s cost of service; (3) PAWC’s agreement to withdraw its request to implement a Pension Tracker; (4) PAWC’s agreement to withdraw its request to implement a RCS; (6) PAWC’s agreement to material enhancements to low-income assistance programs; (7) PAWC’s agreements regarding COVID-19 relief. R.D. at 122-127; PAWC Statement in Support at 8-11, 21‑22; I&E Statement in Support at 4-19.

We note our approval that the revenue increase under the terms of the Settlement acknowledges that, while PAWC may have a substantiated case for a rate increase, the COVID-19 Pandemic Emergency is still ongoing, and therefore, it is appropriate, on balance, to consider factors which will mitigate the economic burden on ratepayers in this time of state-wide emergency. Under its terms, the Joint Petitioners achieved a Settlement which substantially reduces the Company’s originally proposed rate increase to mitigate the economic burden on ratepayers, while affording the Company sufficient revenue to proceed with planned investments necessary to maintain safe and reliable water and wastewater service.

The Settlement provides for an increase of $70.5 million to the Company’s annual overall revenue in total with a rate credit of $10.5 million under the EADIT credit, which provides an important reduction to the rate increase, for a net increase of $60 million. In addition, PAWC has agreed to increase rates over a two-step process to mitigate the impact on customers. This increase is approximately $68 million less than the $138.6 million initially requested by PAWC and is further mitigated by the rate credit. R.D. at 126, 128-129; PAWC M.B. at 7-10.

While we acknowledge the rate increase amount was achieved under the terms of a “black box” Settlement, which does not necessarily attribute specific factors relied upon in the specified rate increase, we expressly find that the substantial evidence of the record supports the rate increase agreed upon under the terms of the Settlement. The stipulated rate increase is approximately 50% of PAWC’s original request, for which PAWC submitted supporting data and direct and rebuttal testimony to substantiate its request. We are further persuaded by I&E’s endorsement of the Settlement rates, based upon I&E’s thorough analysis of PAWC’s ratemaking claims in its base rate filings, which included, *inter alia*, its operating and maintenance expenses, debt service coverage ratio, and rate structure and related information obtained through the discovery process to determine the amount of revenue PAWC needs to provide safe, effective, and reliable service to its customers. *See* I&E Statement in Support 4-19.

As a practical matter, implementation of the $70.5 million increase will be offset, as noted above, by an EADIT credit of $10.5 million in each of the years of 2021 and 2022, beginning on the effective date of Settlement rates, for a total net increase of $60 million. This total net increase will be implemented in two phases as follows: (1) a net increase of $40 million (this includes a $50.5 million increase in base rates that is offset by the $10.5 million credit noted above) on the effective date of the Settlement rates; and (2) a second phase to become effective on January 28, 2022 that increases base rates up to the $70.5 million which will be off-set by a credit of $10.5 million, for a net total increase of $60 million for the twelve months ending January 28, 2023. The credit will cease to apply after January 28, 2023. R.D. at 88-89, I&E Statement in Support at 7.

Viewed in its entirety, the Joint Settlement fairly and equitably resolves the issues impacting residential consumers, business customers, and the public interest at large and represents a fair balance of the interests of PAWC and its customers. We note that the Joint Settlement was non-unanimous, and therefore its provisions remained subject to litigation of the Non-Settling Parties. However, in the same respect that a “partial settlement” of issues benefits all Parties, here, the Joint Settlement served to focus the proceedings, and narrow the contested matters before the ALJ.

Additionally, we find that the Joint Settlement will result in significant savings of time and expenses for all Parties involved by reducing or avoiding the necessity of further administrative proceedings, as well as reducing or avoiding the need for possible appellate court proceedings, thereby conserving precious administrative resources. Further, the Joint Settlement provides regulatory certainty with respect to the disposition of issues which benefits all Parties. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we concur with the ALJ’s conclusion that the Joint Settlement is supported by substantial evidence and is in the public interest.[[6]](#footnote-7)  Accordingly, we shall adopt the ALJ’s Recommended Decision that grants the Joint Petition and approves the Settlement, as modified by this Opinion and Order.

## B Exceptions and Replies

### Approval of Non-Unanimous Settlement: Burden of Proof ([OCA Exception No. 1](#_Toc63088792) and OSBA Exception No. 2 )

#### a. Position of the Parties

The OCA and the OSBA argued that the rates and terms and conditions of the Settlement were required to be fully reconciled with the supporting evidence submitted on the record. Both the OCA and the OSBA maintained that, in view of the disputed evidence, and since the “black box” Settlement did not draw direct correlations to the evidence of record, the ALJ could not conclude that the Settlement was supported by substantial evidence. OCA M.B. at 4-20; OCA R.B. at 1,8; OSBA Objections at 1-5.

#### b. Recommended Decision

In the Recommended Decision, the ALJ reviewed the evidence of record developed by the Parties, and the rates, terms and conditions achieved under the proposed “black box” Settlement, albeit non-unanimous. The ALJ concluded that, in the circumstances, the terms of settlement achieve a just and reasonable rate increase which was supported by substantial evidence of record. In reaching this conclusion, the ALJ applied the standards applicable to approving a settlement in rate proceedings. R.D. at 122-127, citing, *Pa. PUC v. CS Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). R.D. at 122-127.

#### c. Exceptions and Replies

In the OCA’s Exception No. 1, and the OSBA’s Exception No. 2, the Parties assert that the ALJ failed to apply the appropriate standard of review analyzing whether to approve the rates, terms and conditions of the Joint Petition for Settlement. The OCA narrowly focuses upon the ALJ’s statement that, in his consideration of the Joint Petition, “I am bound by the Commission’s policy that encourages settlement, and whether the Settlement is in the public interest.” The OCA avers that the ALJ’s statement that he is “bound” by the Commission’s policy encouraging settlement, constitutes a failure to apply the appropriate burden of proof standard, as set forth in 66 Pa. C.S. § 315(b). OCA Exc. at 2-3, citing R.D. at 126. Similarly, the OSBA avers that, in the absence of a unanimous agreement to the Settlement, the Company should be required to reconcile the Settlement rates with the evidence of record. The OSBA asserts that the ALJ’s failure to do so is reversible error. OSBA Exc. at 5-6.

In its Replies, PAWC argues that the OCA and the OSBA propose a duty, heretofore never required, for the Company to reconcile the evidence of record with the proposed Settlement rates, which reflect a decrease in the rate increase originally requested. PAWC asserts that the OCA’s position ignores the fact that the ALJ’s analysis of the rates, terms and conditions of the Settlement included the appropriate examination of whether those rates, terms and conditions were supported by substantial evidence of record, the analysis typically applied to consideration of a partial settlement. PAWC R. Exc. at 3-4.

PAWC asserts that the ALJ’s detailed analysis and conclusion that the terms of the Settlement were supported by substantial evidence refutes the OCA’s position. PAWC maintains that where, as here, a “black box” settlement is achieved, the Company’s burden of proof is not to reconcile the Settlement rates with the evidence submitted in support of the original proposed rates, but rather, to show that the record evidence supports an increase at least as high as the rate increase agreed upon in the Settlement. PAWC asserts that the ALJ properly applied the same standard applicable to partial settlements, as set forth in *PUC v. Philadelphia Gas Works,* Docket No. R‑2020‑3017206 (Order entered November 19, 2020). *Id*.

#### d. Disposition

We expressly reject the OCA’s narrow reading of the ALJ’s analysis, suggesting a lack of substantial evidence supporting the terms of the Settlement.  We agree with PAWC that the applicable standard of review is the same for approval of a settlement, whether the settlement is total or partial, including a nonunanimous settlement, and that substantial evidence supports the ALJ’s recommendation to adopt the Settlement.  As previously noted, here, the ALJ’s review of the terms of Settlement under the applicable standard of review, was conducted based upon a fully developed record. Based upon the entire record, we find that the Settling Parties have sustained their burden as to both substantial evidence in support of the proposed rate increase, and, as to the finding that the Settlement is reasonable and in the public interest.  Accordingly, the OCA’s Exception No. 1 and the OSBA’s Exception No. 2 are denied.

### Overall Rate Increase Request (OCA Exception Nos. 2 and 3, OSBA Exception No. 1, and CAUSE-PA Exception No. 1)

#### a. Position of the Parties

In its base rate increase filing, PAWC requested an increase to annual operating revenue of $138.6 million over a period of two years. PAWC argued that a complete denial of its proposed rate increase in response to COVID-19 violates Section 1301 of the Code and the constitutional standards established in *Bluefield* and *Hope Natural Gas*. PAWC asserted that it shares the legitimate concerns expressed by various parties regarding the potential for economic hardship for many customers and the inability of some customers to pay an increase to their utility bills due to the financial impact of the COVID-19 Pandemic Emergency. However, PAWC argued that denial of all rate relief will only impair PAWC’s ability to invest in the construction and maintenance of a safe water and wastewater utility systems. PAWC M.B. at 5-10.

PAWC subsequently entered into the Settlement with I&E, PAWLUG and joined by AK Steel. Under the terms of the Settlement, PAWC asserted that the economic impact of the rate increase would be dramatically mitigated by the nearly 50% reduction to the overall amount of the rate increase request, and the substantial expansion of PAWC’s low-income programs. Further, PAWC argued that justification for denial of the Settlement or *any* rate increase were antithetical to the long-standing rate-making principles which have traditionally guided the Commission’s evaluation of a utility’s proposed rate increase. Finally, PAWC maintained that the OCA’s figures and calculations proffered in support of the “no increase” position were fundamentally flawed. PAWC M.B. at 7-10.

The Parties joining PAWC in the Settlement were I&E, the PAWLUG, and AK Steel (Joint Petitioners). The Joint Petitioners agreed with PAWC’s rationale in support of Settlement. Specifically, I&E noted that under the terms of the Joint Settlement, PAWC made significant concessions which would benefit ratepayers. I&E Statement in Support at 10-20; PAWLUG Statement in Support at 7.

The Non-Settling Parties asserted before the ALJ that it was inapporpriate to grant a rate increase in the context of the ongoing COVID-19 Pandemic Emergency. Each asserted that the existance of an unprecendented public health emergency should override the traditional rate-making principles and preclude the Company from seeking a rate increase at this time. The Non-Settling Parties strongly advocated that the Commission deny the increase request on its face, alleging that a rate increase at this time ignores the economic strain placed on customers and the Commonwealth due to the COVID-19 Pandemic Emergency. The Non-Settling Parties asserted that any increase would result in unjust and unreasonable rates. These Parties urge that the Commission’s ratemaking discretion is broad enough to include a complete denial of PAWC’s rate increase during an unprecedented and economically devastating pandemic. Furthermore, they argued that denying rate relief is both a reasonable and temporary outcome in these extraordinary times, and that it will result in just and reasonable rates until such time when fewer customers are suffering financially, and the future is more ascertainable for ratemaking. R.D. at 107-122; OCA M.B. at 4-20; OSBA Objections at 3.; CAUSE-PA M.B. at 11, 13-23; CEO M.B. at 3.

PAWC countered that the Commission has already established that the existance of the COVID-19 Pandemic Emergency is not a reason to, *per se*, reject a utility’s request for rate increase. PAWC maintained that, contrary to the position of the OCA, the OSBA and the CAUSE-PA, the Settlement properly weighed the ramifications of an unprecendented state-wide health emergency and the practical economic impact by achieving a reduced rate increase from the original proposal and by including terms and conditions specifically targeting low-income custormers to mitigate against the economic hardships faced by PAWC’s customers. PAWC asserted that the Settlement fairly and equitably resolves the issues impacting residential consumers, business customers, and the public interest at large and represents a fair balance of the interests of PAWC and its customers. PAWC R. B. at 7-19.

#### b. Recommended Decision

The ALJ agreed with the Joint Petitioners that the COVID-19 Pandemic Emergency did not preclude the adoption of the Settlement, and related rate increase in this rate proceeding. The ALJ noted the Commission’s broad discretion in determining whether a utility’s rate increase is just and reasonable. R.D. at 122-127. In applying the standard for adoption of a “black box” settlement, the ALJ concluded, based upon all the circumstances of this case, including those related to the COVID-19 Pandemic Emergency, that approval of the Settlement’s rate increase was just and reasonable and in the public interest. *See* R.D. at 126-127.

#### c. Exceptions and Replies

In the OCA’s Exception No. 2, the OSBA’s Exception No. 1, and CAUSE-PA’s Exception No.1, the Parties assert that the ALJ’s grant of a rate increase in the context of the ongoing COVID-19 Pandemic Emergency was reversible error. Each assert that the existence of an unprecedented public health emergency should override the traditional rate-making principles and preclude utilities from seeking a rate increase at this time. OCA Exc. at 4-12; OSBA Exc. at 4-5; CAUSE-PA Exc. at 4-9. As noted, CEO joins in and supports the OCA’s Exception No. 2 and CAUSE-PA’s Exception No. 1. CEO R. Exc. at 1. In addition, OCA’s Exception No. 3 asserts that the ALJ’s FOF No. 34 should be stricken as a “mischaracterization” of the testimony of OCA’s witness regarding the use of year-end rate base with FPFTY.  OCA Exc. at 11.

In their Replies, both PAWC and I&E reject the position that granting a rate increase in the context of the ongoing COVID-19 Pandemic Emergency was reversible error. PAWC and I&E assert that the rates and terms and conditions of the Joint Settlement were negotiated under, and contemplated, the harsh economic impact of the COVID-19 Pandemic Emergency. PAWC and I&E assert that the Commission’s traditional analysis of the Company’s proposal for a rate increase under the *Bluefield* and *Hope Natural Gas* cases, as well as the standards applicable to the review of a settlement, envision a balance of competing interests, and all the existing circumstances, including the extraordinary circumstances of the COVID-19 Pandemic Emergency. PAWC R. Exc. at 3-7; I&E R. Exc. at 4-10

#### d. Disposition

Upon review, we shall deny the OCA’s Exception No. 2, the OSBA’s Exception No. 1, and the CAUSE-PA’s Exception No.1. As discussed *supra*, our approval of the Settlement is predicated upon our conclusion that the revenue increase under the terms of the Settlement acknowledges that, while PAWC may have a substantiated case for a rate increase, the COVID-19 Pandemic Emergency is still ongoing, and therefore, it is appropriate, on balance, to consider factors which will mitigate the economic burden on ratepayers in this time of state-wide emergency. Under the terms of the Settlement, the Joint Petitioners achieved a Settlement which substantially reduces the Company’s originally proposed rate increase to mitigate the economic burden on ratepayers, while affording the Company revenue to proceed with planned investments necessary to maintain safe and reliable water and wastewater service.

Our disposition of this matter is guided by the rate-making principles which established that the Commission must ensure that a public utility’s rates are just and reasonable and not unduly discriminatory. *See* 66 Pa. C.S. §§ 1301, 1304. “In determining just and reasonable rates, the PUC has discretion to determine the proper balance between interests of ratepayers and utilities…Further, the PUC is obliged to consider broad public interests in the rate-making process.” *Popowsky I*, 665 A.2d at 812 (citations omitted); *see also* *Hope Natural Ga*s, 320 U.S. at 603 (the “[f]ixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests…”).

Regarding our discretion in fixing just and reasonable rates, the Pennsylvania Supreme Court explained:

There is ample authority for the proposition that the power to fix “just and reasonable” rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.

*Popowsky I*, 665 A.2d at 812 (citations omitted).

The main issue raised in the Exceptions is whether, and how, the ongoing COVID-19 global pandemic affects our authority and discretion in determining just and reasonable rates to be charged by PAWC during the prospective period in which its rates will be in effect. In our review we rely upon ratemaking norms[[7]](#footnote-8) which have been developed over time and consistently utilized by parties in rate cases before the Commission to determine the appropriate level of a utility’s requested revenue increase in accordance with all applicable legal and constitutional standards. These norms, or traditional ratemaking methodologies, are used to determine a utility’s cost of providing service, or its revenue requirement, and to determine appropriate rate structure, which includes, among other things, the appropriate allocation of the revenue requirement to various customer classes. We reject the notion that our continued use of these traditional ratemaking methodologies to determine the utility’s cost of service somehow inherently limits our consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability, during this pandemic. These ratemaking norms provide a rational and methodical way for considering and weighing of important factors or principles in setting just and reasonable rates, both in normal circumstances, and in extraordinary circumstances, such as a pandemic.

Here, our analysis of the Settlement is guided by these rate-making norms, and consistent with the constitutional standards articulated in *Bluefield* and *Hope Natural Gas*, and in the exercise of our discretion, we are persuaded that the rates, and terms and conditions of the Settlelment are just and reasonable, supported by substantial evidence of record, achieve a fair and equitable balance of the issues impacting the Company, residential consumers, business customers, and the public interest at large, and are in the public interest. Accordingly, the OCA’s Exception No. 2, the OSBA’s Exception No. 1, and CAUSE-PA’s Exception No.1, are denied. Finally, given our disposition denying the Exceptions challenging the overall rate increase request, the OCA’s Exception No.3 is rendered immaterial, as it challenges an underlying finding of fact which is not determinative to our disposition, and it is, therefore, denied.

### 3. Expenses: Performance Based Compensation (OCA Exception No. 4)

#### Position of the Parties

PAWC explained that performance compensation was calculated on a position-by-position basis for eligible employees, based on each position’s target percent or percentage of base salary that is provided if an employee achieves their performance target under both the Annual Performance Plan (APP) and Long-Term Performance Plan (LTPP). PAWC continued that, to determine the cost of compensation under the APP and LTPP, the target percent was multiplied by each eligible employee’s pro forma base salary in the Future Test Year (FTY), Rate Year 1 (RY1) and Rate Year 2 (RY2). PAWC St. 6 at 10.

PAWC provided that its compensation plans emphasize customer service, environmental compliance, a safe work environment and specific financial metrics that aid in measuring operational efficiency. PAWC elaborated that its objective is to pay compensation that is, on average, comparable to the mid-point of compensation paid by enterprises with whom it competes for employee talent. To achieve this goal, PAWC uses a combination of base salary, variable (or at risk) pay and benefits to attract and retain employees and to improve performance and efficiency. PAWC stated that the combination of fixed and variable compensation comprises the overall salary expense, adding that, beginning in 2019, collective bargaining unit (CBU) employees are covered by the APP. Further, PAWC noted that its compensation program is designed to provide employees with a compensation package that is similar to and competitive with those offered by other companies. Moreover, PAWC asserted that, by using a combination of base and variable compensation, its employees are being reasonably compensated while incentivizing them to achieve goals that benefit PAWC customers. PAWC St. 6 at 10-11.

The OCA recommended that allocated APP costs for PAWC and the affiliate service company be reduced by 50%, explaining that financial gains to shareholders are driving the program’s growth strategy and payment of the awards. The OCA added that the increased costs are beyond what is necessary for the provision of safe and reliable utility service and just and reasonable rates. Accordingly, the OCA recommended the 50% reduction to APP expense to remove the incentive compensation expense that is incurred pursuant to the financial performance of the APP. OCA M.B. at 27,citing OCA St. 2SR at 32, 50.

The OCA also asserted that PAWC is proposing to charge its ratepayers to fund the full amount of stock-based compensation costs that are charged to PAWC and included in the affiliated service company fees allocated to PAWC. The OCA elaborated that PAWC’s stock-based compensation plan is designed to benefit PAWC’s shareholders and does not provide any measurable benefit to ratepayers. The OCA further noted that PAWC did not provide any studies to demonstrate a quantitative benefit to ratepayers from the provision of stock-based compensation to PAWC and affiliated service company executives. Moreover, the OCA provided that ratepayers should not be required to pay executive or management compensation that is based on the performance of PAWC’s stock price, or the stock of its parent company, particularly given that many ratepayers are struggling with the financial difficulties of the COVID-19 Pandemic Emergency. Accordingly, the OCA averred that the costs of the LTPP should be eliminated from PAWC’s cost of providing utility service to ratepayers. OCA M.B. at 29-30,citing OCA St. 2 at 75-77; OCA St. 2SR at 37-38.

#### Recommended Decision

In the Recommended Decision, the ALJ noted that the OCA witness, Mr. Ralph J. Smith, proposed adjustments to disallow: (1) 50% of the compensation earned by employees of PAWC and the service company under the APP; and (2) 100% of the compensation earned by PAWC and the service company employees under the LTPP. In sum, the ALJ found that Mr. Smith’s proposed adjustments would reduce PAWC’s overall operating expense claims by $1.9 million (RY1) and $1.7 million (RY2). R.D. at 47, FOF Nos. 64-65,citing OCA Exh. LA-8, Schs. C-6, C-9, and C-10; OCA St. 2 at 68-77; OCA St. 2SR at 32-36, 50.

The ALJ found that arguments and adjustments, such as those advanced by Mr. Smith, were rejected by the Commission in the fully-litigated base rate case for *Pa. PUC v. PPL Electric Utilities Corporation*,Docket No. R‑2012‑2290597 (Order entered December 28, 2012) (*PPL 2012 Order*). The ALJ added that, based on its reliance to, and affirmation of, the *PPL 2012 Order*, the Commission rejected the proposed disallowances of performance compensation again in *Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2017-2640058 (Order entered October 25, 2018) (*UGI 2018 Order*). R.D. at 48, FOF Nos. 66-67,citing *PPL 2012 Order* at 26; PAWC St. 6-R at 13-14; *UGI 2018 Order* at 73-74.

The ALJ, upon noting that no party disputed the reasonableness of PAWC’s overall compensation package, concluded that PAWC “presented unrefuted evidence (a detailed third-party compensation analysis) demonstrating that American Water’s total employee compensation, including performance compensation, is consistent with market best practices and comparable to the designs of utility peers.” R.D. at 48, FOF No. 68, citing PAWC St. 6-R at 9-10; OCA Exh. LA-4 at 52-57. The ALJ also found that the evidence presented by PAWC in this case was the same decisive evidence the Commission relied upon in the *PPL 2012 Order* and in the *UGI 2018 Order*. R.D. at 48, FOF No. 68.

#### OCA Exception No. 4 and Replies

In its Exception No. 4, the OCA requests that the Commission adopt its adjustments to PAWC’s proposed performance-based compensation claims and decline to adopt FOF Nos. 66, 67, and 68 of the Recommended Decision. OCA Exc. at 12, 14. The OCA avers that the ALJ incorrectly stated in the Recommended Decision that the OCA’s recommended adjustments were rejected by the Commission in the *PPL 2012 Order* and the *UGI 2018 Order*, and that PAWC presented the same evidence that the Commission relied upon to deny similar claims in the *PPL 2012 Order* and the *UGI 2018 Order*. OCA Exc. at 12,citing R.D. at 48, FOF Nos. 66-68.

The OCA contends that the base rate cases for both the *PPL 2012 Order* and *UGI 2018 Order* are not dispositive of the issue of PAWC’s performance-based compensation claims because they are “factually distinct.” OCA Exc. at 12. The OCA explains that, the Commission noted in the *PPL 2012 Order* that its acceptance of PPL’s incentive compensation plan is distinguishable from prior decisions in which the incentive compensation plan was denied because PPL provided substantial evidence that the incentive compensation was reasonable or benefited ratepayers. *Id*., citing *PPL 2012 Order* at 26. The OCA continues that, in the *UGI 2018 Order*, the Commission determined that UGI provided substantial evidence demonstrating that customers would benefit from the incentive compensation program, which included financial and operating metrics and goals. *Id.*, citing *UGI 2018 Order* at 73-74.

Further, the OCA asserts that PAWC has not provided evidence to support its claimed inability to retain management. The OCA cites to a Philadelphia Gas Works (PGW) Commission Order from 2007 (*P**a. PUC v. Philadelphia Gas Works*, 2007 Pa. PUC LEXIS 45, (Order entered September 28, 2007) (*PGW 2007 Order*)) to show that the Commission previously disallowed an incentive compensation plan for that same reason. OCA Exc. at 12-13, citing *PGW 2007 Order* at 75-76. The OCA adds that PAWC did not provide any studies demonstrating a quantitative benefit to ratepayers from the provision of stock-based compensation to PAWC and affiliated service company executives. OCA Exc. at 13, citing OCA R.B. at 13-14; OCA St. 2 at 75-76.

Moreover, the OCA counters that its adjustments to the expenses of PAWC’s APP and LTPP are reasonable because its adjustments are based on PAWC’s goals for the program. OCA Exc. at 13, citing OCA St. 2SR at 33-35; OCA M.B. at 27‑29; OCA R.B. at 12-14. The OCA adds that its adjustment to PAWC’s stock-based compensation expense is reasonable because PAWC seeks to have its ratepayers take on a cost that historically has been shouldered by shareholders. *Id.*, citing OCA St. 2 at 77. The OCA believes that, given the current difficulties faced by ratepayers due to the COVID-19 Pandemic, ratepayers should not be required to fund compensation for executives and management. The OCA references two recent cases in other states to show that PAWC’s affiliates were also denied either partial or full rate recovery of their incentive compensation programs.[[8]](#footnote-9) OCA Exc. at 13-14.

The OCA emphasizes that permitting a shareholder-oriented expense in PAWC’s revenue requirement, particularly given the struggles and financial difficulties many ratepayers face due to the COVID-19 Pandemic, “is neither a reasonable nor appropriate regulatory policy to promote reliable and effective public utility service.” OCA Exc. at 14, citing OCA M.B. at 30; OCA St. 2 at 76-77.

The OCA concluded it has demonstrated that financial gains to shareholders are driving the APP’s growth strategy and payment of the awards. Moreover, the OCA maintains that PAWC seeks to shift the cost of its stock-based compensation/LTPP expense from shareholders to its ratepayers, adding that PAWC’s stock-based compensation plan is designed to benefit its shareholders and does not provide measurable benefits to the ratepayers. OCA Exc. at 14,citing OCA R.B. at 13; OCA St. 2 at 76-77; OCA St. 2SR at 36-37.

In its Replies, PAWC reiterates the ALJ’s explanation that the Commission 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 allow recovery of some of the utility’s performance compensation costs. PAWC R. Exc. at 7-8, citing R.D. at 48; *PPL 2012 Order* and *UGI 2018 Order*. PAWC contends that because the arguments presented by the OCA have already been rejected by the Commission in prior rate cases, the Commission should deny the OCA’s Exception No. 4. PAWC R. Exc. at 8, citing *PPL 2012 Order* and the *UGI 2018 Order*. According to PAWC, going by the OCA’s reliance on the *PGW 2007 Order*, the OCA would have the Commission believe that the APP and the 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. PAWC R. Exc. at 8.

PAWC asserts that it presented a third-party compensation analysis in this proceeding demonstrating that its total employee compensation, including performance compensation, is reasonable. PAWC avers that the Commission found this evidence determinative in the *PPL 2012 Order* and the *UGI 2018 Order* and the ALJ in this proceeding found this evidence reasonable. PAWC contrasts the performance compensation plan at issue in the *PGW 2007 Order* relied upon by the OCA stating that safety, reliability and customer service are all metrics utilized in the APP for eligible employees. *Id.* at 8-9, citing PAWC M.B. at 23-24; PAWC R.B. at 27-28.

#### d. Disposition

Upon review, we shall deny the OCA’s Exception No. 4. We find that PAWC has provided substantial evidence of record to demonstrate that the performance compensation program includes both financial and operating metrics and goals which benefit customers. For example, PAWC has presented testimony that safety, reliability, and customer service are all metrics utilized in the APP and LTPP for eligible employees. Further, PAWC has provided that the eligible employees have direct responsibilities for customer service and regulatory compliance or are otherwise responsible for ensuring safe and reliable service to customers. Moreover, we acknowledge that the performance compensation appears to be necessary in a competitive market to attract and retain employees who serve key roles in ensuring safe and reliable service to customers. *See, e.g.*, PAWC St. 6-R at 10-11; and PAWC St. 6 at 10-11.

The performance compensation program establishes that the employees’ eligibility to receive the benefit is based on performance duties and metrics directly related to the provision of service; the fact that the program includes a financial metric does not disqualify it from allowance as an expense for inclusion in the rate base. Accordingly, we find that recovery of PAWC’s APP and LTPP expense is consistent with our prior decisions approving similar performance compensation programs that are focused on improving operational effectiveness. *See. e.g.,* *PPL 2012 Order* at 26; and *UGI 2018 Order* at 74. Accordingly, we are not persuaded to modify FOF Nos. 66, 67, or 68, and we shall, therefore, deny the OCA’s Exception No. 4.

### 4. Taxes: Excess Accumulated Deferred Income Taxes (EADIT) Amortization Period (OCA Exception No. 5)

#### a. Position of the Parties

The Company originally proposed amortizing plant-related unprotected EADIT over a period that corresponds to the life of the underlying plant and proposed amortizing non-plant related EADIT over twenty years. Subsequently, the Company agreed with the Non-Unanimous Settlement’s adoption of a twenty-year amortization of all EADIT.

The OCA proposed a three-year, straight-line amortization period for EADIT and asserted that a three-year amortization period is reasonable and consistent with other amortizations used by the Company in its proposed tariff. The OCA further asserted that amortizing the unprotected EADIT amount over a three-year period promotes intergenerational equity as it returns the excess income tax money to the customers who paid rates based on the previous 35% corporate tax rate, and it helps to mitigate the rate impact.OCA MB at 33-34.

#### b. Recommended Decision

The ALJ found that under the OCA’s three-year amortization, a mismatch would be created between the distribution of tax benefits that reduce the fixed costs of the Company’s plant in service and the actual service life of that plant. Thus, EADIT tax benefits would be clustered in three years, while the plant that generated those tax effects would remain in service to customers, and its on-going fixed costs would continue to be borne by customers, over several decades into the future. R.D. FOF 83, Tr. at 764-767. As noted, the ALJ adopted the Non-Unanimous Settlement which provides for a twenty-year amortization of all EADIT.

#### OCA Exception No. 5 and Replies

The OCA filed its Exception No. 5 regarding the ALJ’s adoption of a twenty-year recovery period noting that the ALJ did not discuss tax issues litigated in this proceeding but did adopt the terms of the Non-Unanimous Settlement in regard to a very important tax issue involving EADIT. OCA Exc. at 15.

The OCA explained that unprotected EADIT relates to book-tax differences for which there is no mandatory normalization requirement in the Internal Revenue Code, and that the Commission has discretion under the Tax Cuts and Jobs Act (TCJA) in determining the amortization period for all unprotected EADIT. OCA Ex. At 15.

The OCA asserts that the twenty-year amortization period for unprotected EADIT in the Non-Unanimous Settlement is not supported by the record evidence. In contrast, a three-year amortization period is reasonable because it promotes intergenerational equity by returning the excess income tax money to the customers who paid rates based on the previous 35% corporate tax rate and it helps to mitigate the rate impact. OCA Exc. at 16.

In its Replies, the Company notes that the OCA excepted to the ALJ’s approval of the Joint Petitioners’ proposal to amortize EADIT produced by the TCJA over a twenty-year period. The Company believes that the OCA primarily contends, without merit, that: (1) the Commission has discretion under the TCJA in determining the amortization period for all unprotected EADIT; (2) its proposal to amortize unprotected EADIT over a period of three years is reasonable; and (3) PAWC’s proposed amortization period is not supported by the record.

The Company explains that 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 which is at odds with Commission-approved settlement terms requiring that tax to book timing differences attributable to repair deductions be normalized for ratemaking purposes. In prior PAWC base rate cases, the OCA strongly supported normalizing repair-related deductions because doing so benefited customers. Because Commission-approved settlement terms require the repairs component of PAWC’s EADIT be treated as subject to normalization, the Company contends that component of EADIT should be deemed “protected” for ratemaking purposes. The Company asserts that the OCA’s position is also contrary to its position in the Commission-approved settlement of Duquesne’s 2018 base rate case.

The Company further contends that the OCA’s contention that PAWC’s position is unsupported in the record is also without merit. In this regard, the Company avers that PAWC witness John R. Wilde provided extensive support for a twenty-year amortization period. The Company maintains that a three-year amortization period would provide customers with a temporary reduction in revenue requirement, but when amortization ends, a large increase in revenue requirement (approximately $116 million) would follow because PAWC would need to replace the no-cost ADIT tax loan with funds at its pre-tax overall cost of capital. 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”). PAWC R. Exc. at 9-10.

#### d. Disposition

We agree with the ALJ’s recommendation that adopts a twenty-year amortization of the Company’s EADIT as contained within the Non-Unanimous Settlement which he has recommended be approved. We agree with the ALJ that the OCA’s three-year amortization period does not comport with the useful life of the repair-deductions associated with this issue. Additionally, we find that the Company’s proposal will mitigate erratic swings in base rates. Accordingly, we shall deny the OCA’s Exception No. 5.

### 5. Fair Rate of Return (OCA Exception No. 6)

#### a. Position of the Parties

PAWC explained in its Main Brief, that as a public utility whose facilities and assets have been dedicated to public service, it is entitled to an opportunity to earn a fair rate of return on its investment. PAWC averred that it has reached an agreement with other Joint Petitioners on a rate increase that will permit the Company to continue its planned investment in new and replacement plant and equipment, including investments necessary to meet the significant challenges posed by the small, troubled systems that the Company has acquired with Commission approval. PAWC M.B. at 37.

PAWC stated that it has reviewed the OCA’s recommendations and, based on the evidence in this proceeding, has determined that the OCA’s proposed capital structure and recommended cost of common equity (the cost of the Company’s long-term debt is not in dispute) contains errors. PAWC asserted that the OCA’s resulting return on equity (ROE) is plainly unreasonable and inconsistent with Commission precedent. Accordingly, PAWC requested that in assessing the reasonableness of the Settlement, or if the Settlement is not approved, the Commission should reject the OCA’s recommendations and adopt the capital structure and ROE supported by PAWC’s witness. PAWC M.B. at 39-40.

The OCA, a non-settling Party, has proposed to *reduce* the Company’s rates based on proposed ROE of 8.00% (water) and 8.05% (wastewater).

PAWC asserted that the OCA’s proposed ROEs are well below the authorized returns for *all* water utilities in the United States for the last decade, excluding one South Carolina utility that serves only 16,500 water and 11,800 wastewater customers. However, PAWC noted that the South Carolina utility is a fraction of the size of PAWC and has had significant operational problems in contrast to PAWC’s superior performance.

PAWC also submitted that the OCA’s proposed ROE is also well below the 9.90% ROE authorized by the Commission for the water utility DSIC on October 29, 2020, based on data through September 28, 2020. PAWC M.B. at 36.

In its Statement in Support, PAWC stated that the allocations contained in the Non-Unanimous Settlement provide “for reasonable movement toward the system average rate of return by the various classes as measured by the Company’s cost of service study.” PAWC Statement in Support at 31. However, the OCA argued that the Non-Unanimous Settlement and the Appendices provide no evidence to support that statement. Moreover, the OCA contended that the Appendices to the Settlement fail to provide any schedules that show how the Non-Unanimous Settlement allocations provide for “reasonable movement” (or any movement) toward the system average rate of return. R.D. at 111; OCA Objections at 9.

PAWC noted that, the legal standards to be used by the Commission in determining what return rate is fair are well-established, having been set forth by the United States Supreme Court in *Bluefield*, over eighty years ago:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility of its property in violation of the Fourteenth Amendment. (262 U.S. at 690).

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 (262 U.S. at 693). These principles were applied by the Commission in the *UGI Electric 2018* and *PPL 2012 Orders*, and have been adopted by Pennsylvania appellate courts, in numerous cases. PAWC M.B. at 38.

PAWC further noted that the return allowed to investors must also be commensurate with the risk assumed, as the Supreme Court has stated in three landmark opinions. *Bluefield*, *supra*, requires that the rate of return reflect:

. . . a return on the value of the [utility’s] property which it employs for the convenience of the public equal to that generally being made at the same time on investments in other business undertakings which are attended by corresponding risks and uncertainties. . . . (262 U.S. at 692)

Twenty-one years later, the Supreme Court reiterated that standard in *Hope Natural Gas*, as follows:

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 the 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. (320 U.S. at 603).

Later, in reaffirming *Hope*, the Supreme Court, in *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313-14 (1989) observed that “[o]ne of the elements always relevant to setting the rate under *Hope* is the return investors expect given the risk of the enterprise.” PAWC asserted that the application of these traditional rate-making principles warrants the approval of the rate of return (ROR or rate of return) achieved under the terms of the Settlement. PAWC M.B. at 39.

PAWC argued that determining a fair rate of return requires reviewing many factors, including: (1) the earnings necessary to assure confidence in the financial integrity of the company and maintain its credit standing; (2) the need to pay dividends and interest; and (3) the amount of the investment, the size and nature of the utility, its business and financial risks, and the circumstances attending its origin, development and operation. PAWC M.B. at 39.

The OCA asserted that PAWC’s proposed cost of capital is excessive. The OCA noted that it used a Discounted Cash Flow (DCF) analysis and a Capital Asset Pricing Model (CAPM) as a check and claimed that its analysis demonstrates that under a business-as-usual approach for PAWC’s water operations, the market-derived cost of common equity is 8.00%, and the overall rate of return is 6.30%, based upon a capital structure of 48.30% debt and 51.64% common equity. For PAWC’s wastewater operations, a market-derived cost of common equity is 8.05%, and the overall rate of return is 6.08%, based upon a capital structure of 39.44% debt and 50.37% common equity. OCA M.B. at 37.

The OCA further submitted that, in the event the Commission determines PAWC is entitled to an increase at this time, the Commission should consider its witness’ cost of capital proposal under a business-as-usual approach. The OCA stated that its cost of capital proposal accurately portrays the current low-cost capital environment and reflects reasonable returns for investors, while balancing the concern of PAWC consumers who will be paying the increased rates. The OCA added that its approach also considers the financial hardships facing many PAWC consumers as a result of the COVID-19 Pandemic Emergency. OCA M.B. at 36.

Finally, the OCA asserted that, if the Commission adopts the OCA’s recommendation that no increase be approved (due to the ongoing COVID-19 Pandemic Emergency and the related economic impact on PAWC’s customers), the overall rates of return of 7.70% for water (with a capital structure of 51.64% cost of common equity and 48.3% cost of debt), and 2.84% for wastewater (with a capital structure of 50.37% cost of common equity and 39.44% cost of debt) represent a fair rate of return that would balance the interests of consumers and shareholders and would be in the public interest. OCA M.B. at 36.

#### b. Recommended Decision

The ALJ found that PAWC’s analysis of current market conditions, its application of traditional ROE models that historically have been accepted by the Commission, and its recommendation of a 10.8% ROE is reasonable. R.D. at 52.

Regarding the OCA’s proposed ROE of only 8.00% and 8.05%, respectively, for the Company’s water and wastewater operations, the ALJ found them to be well below the authorized returns for *all* water utilities in the United States for the last decade, excluding one South Carolina utility that serves only 16,500 water and 11,800 wastewater customers, is a fraction of the size of PAWC, and had significant operational problem. Further, the ALJ found that the ROEs proposed by the OCA are well below the 9.90% ROE authorized by the Commission for the water utility DSIC on October 29, 2020, based on data through September 28, 2020. R.D. at 52.

#### OCA Exception No. 6 and Replies

In its Exception No. 6, the OCA asserts that certain of the ALJ’s factual findings regarding fair rate of return are not supported by substantial evidence. The OCA reiterates its view that the record establishes that a fair ROR in the circumstances should be limited to no increase, thereby affording PAWC overall rates of return of 7.70% for water (with a capital structure of 51.64% cost of common equity and 48.3% cost of debt), and 2.84% for wastewater (with a capital structure of 50.37% cost of common equity). OCA Exc. at 18-23.

In its Replies, PAWC counters that the circumstances of the COVID-19 Pandemic Emergency do not nullify the traditional rate-making analysis, under which PAWC has offered substantial evidence to support its originally proposed rate increase and resulting ROR. Therefore, substantial evidence exists on the record to support the reduced ROR achieved under the terms of the Settlement, and the ALJ properly recommended approval of the Settlement. PAWC R. Exc. at 10-15.

#### d. Disposition

We agree with the ALJ’s rationale and recommendation on this issue, approving, as contained within the Joint Settlement, the Company’s application of traditional ROE models and its analysis of current market conditions. We expressly agree with the ALJ’s findings, which we conclude were supported by substantial evidence. Therefore, we shall deny the OCA’s Exception No. 6.

### 6. Rate Structure and Cost Allocation

#### a. Separate Storm Water Rate (OCA Exception No. 7 and Replies)

##### Position of the Parties

PAWC asserted, in response to I&E’s position that PAWC should be required to file stormwater rates in its next base rate case, that such a rate is not necessary for the following reasons: (1) the Company provides wastewater service, but does not directly provide a separate stormwater service; (2) the permitting and operating of combined systems that treat wastewater and stormwater are one wastewater system; (3) since few, if any, other combined systems have implemented a stormwater rate, PAWC should not be required to implement one; (4) the bulk of stormwater charges that currently exist are related to municipal separate stormwater systems as opposed to combined systems and that municipalities that do operate combined systems largely collect only fees for provision of wastewater service; (5) legislation would be needed to implement a stormwater charge; I&E St. 5-4 at 4-5 (citing PAWC St. 3-R at 3-6); (6) it is not clear how the Company bills entities that are not “customers;” (7) it is unclear what recourse the Company would have for nonpayment for entities who are not water or wastewater customers; and (8) a study should be conducted first to see if such a rate is feasible. I&E St. 5-4 at 4-5,citing PAWC St. No. 4-R at 25-27.

In addition, the Company asserted that there would not be enough time to implement a stormwater rate by the next base rate case.

However, to work toward the development of separate stormwater rates, the Company supports the Settlement provision in Paragraph No. 28, on page 10, with regard to stormwater cost of service studies, as follows:

28. In future rate filings, PAWC will submit one or more separate stormwater and wastewater cost-of-service studies for each of its combined sewer systems (“CSS”) currently consisting of McKeesport, Scranton and Kane and including any other CSS acquired by the time of each of the future rate filings. The Company is not required to provide a separate study for each combined stormwater system.

In addition, as a signatory to the Settlement, the Company agrees to propose potential recovery and rate methodology options for stormwater costs of combined sewer systems in its next base rate filing as required in Paragraph No. 71, on page 20 of the Settlement:

e. Stormwater Rates: Under the Settlement, the Company agrees to propose potential recovery and rate methodology options for stormwater costs of combined sewer systems in its next general wastewater or combined water/wastewater base rate filing. The proposals will include an analysis of the recovery of such stormwater costs through various methodologies including forms of separate stormwater rates, and a description of the customers to whom the rates would apply. PAWC also agrees that, at intervals of approximately one year and two years after entry of the Commission’s final Order approving the Settlement in this proceeding, unless the Company files a wastewater or combined water/wastewater general base rate case prior to either of those times, it will meet with the parties to this case to provide progress updates and discuss potential cost recovery methods under consideration.

*Id*.

I&E argued that PAWC should be required to implement a Storm Water Rate in its next base rate case in the Company’s wastewater operations where the Company operates combined sewer systems (CSS) because currently, stormwater costs are recovered in wastewater usage rates and this creates a mismatch in how stormwater costs are incurred and how the cost is recovered. I&E St. 5 at 13-14; I&E St. 5-R at 4.

In addition, I&E disagreed with all of the reasons submitted by the Company against the implantation of a stormwater rate. I&E provided detailed responses in its surrebuttal testimony to each of the Company’s reasons for not implementing a stormwater rate. I&E St. 5-R at 5-10.

Subsequently, I&E became a signatory to the Settlement in which it agreed to the terms and conditions regarding the stormwater rate.

The OCA disputed PAWC’s method for allocating stormwater costs to rate classes. The OCA witness, Mr. Scott Rubin, testified that collecting stormwater costs based on water consumption or number of customers, regardless of a property’s actual contribution stormwater inflow, is unfair and inconsistent with cost causation principles. As such, Mr. Rubin proposed an “across-the board” increase to existing rates in PAWC’s Scranton, McKeesport and Kane CSS rate areas and recommended that the Commission require PAWC to propose a separate stormwater rate in its next rate case. R.D. at 62; OCA St. 1 at 41-49, 49-50, 87-89; 91‑93.

##### ii. Recommended Decision

The ALJ recommended approval of the proposed Settlement, without modification. As noted *supra*., the Settlement, *inter alia*, contained specific terms and conditions regarding the potential implementation of a separate stormwater rate. The ALJ averred that the above provision of the Settlement addresses Mr. Rubin’s concerns about the allocation of stormwater costs in PAWC’s CSS rate zones. FOF No. 141.

In recommending the adoption of the Settlement, the ALJ approved the proposed allocations of revenues and the resulting rate restructure supported by the Parties to the Settlement. In this regard, the ALJ stated:

The Settlement Rates will allocate the agreed upon combined water and wastewater revenue requirement to each rate zone and customer class in a manner that is reasonable in light of the rate structure/cost of service positions of the Joint Petitioners and implement Section 1311(c) of the Public Utility Code in a manner that is agreeable to the Joint Petitioners.

R.D. at 126. Thus, the ALJ adopted the allocation of revenues, including the total allocation of wastewater revenue requirement to its water operations’ cost of service, and the allocation of the Steelton water revenue requirement to other water operations, consistent with the positions of the Parties in the Settlement. R.D. at 59-62, 126-27.

Regarding the allocation of wastewater revenue requirement to water operations, the ALJ noted that under the Settlement rates, only $29.3 million (Step 1) and $21.5 million (Step 2) of wastewater revenue requirement, compared to $32.9 million (RY1) and $35.2 million (RY2) originally proposed by the Company, would be allocated to the Company’s water operation’s cost of service. FOF No. 131, Settlement at ¶ 69.E; PAWC St. 1 at 30-34. The ALJ found that while the total wastewater allocation to water operations under the Settlement rates plays an important role in mitigating the increases to the Company’s 76,000 wastewater customers, it will have a modest effect of approximately $2.40 per month to an average residential customer. FOF No. 133; Settlement, Statement A at 7, n.2. Thus, the ALJ found that the reduced allocation of total wastewater revenue requirement to water operations pursuant to Section 1311(c) of the Code under the Settlement is in the public interest. FOF No. 132.

Regarding the allocation of the Steelton water revenue requirement to other water operations, the ALJ explained that the Settlement provides that approximately $1.3 million (Step 1) and $1.2 million (Step 2) of the Steelton water revenue requirement would be allocated to the cost of service of the Company’s other water operations in lieu of the $1.8 million (RY1) and $1.4 million (RY2) originally proposed by the Company. FOF No. 136; PAWC’s M.B. Appendix (Revised Summary of Proof of Revenues). R.D. at 102-103.

##### OCA Exception No. 7 and Replies

In its Exception No. 7, the OCA argues that the ALJ’s decision regarding stormwater costs are not supported by the evidentiary record. OCA Exc.at 24-26, citing R.D. at 19, 26-27, 62,94, 114; OCA M.B. at 76-83; OCBS R.B. at 24. The OCA specifically disagrees with the ALJ’s FOF No. 141 which states that “[t]he Settlement addresses Mr. Rubin’s concerns regarding the allocation of stormwater costs in PAWC’s CSS rate zones.” OCA Exc. at 24,citing R.D. at 62.

The OCA asserts that the Settlement only addresses some of Mr. Rubin’s concerns regarding the allocation of stormwater costs in the Company’s CSS rate zones. OCA Exc. at 24. In this regard, the OCA notes that Mr. Rubin’s adjustments to the Company’s water cost of service study were accepted and resolved, and that Mr. Rubin did not have any adjustments to the sanitary sewer cost of service study. However, the OCA points out that the Settlement does not address Mr. Rubin’s concern that if costs are not accurately separated and assigned between the Company’s sanitary sewer and stormwater systems, and if wastewater costs are shifted to water customers, then sanitary sewer customers and water customers would be forced to pay for stormwater costs that are not related to wastewater service. *Id.*

The OCA also contends that the Settlement does not address: (1) Mr. Rubin’s recommendations regarding the combined sewer cost of service studies; (2) rate design, including the scale back if PAWC is granted any increase in revenue requirement; (3) the allocation of wastewater revenue requirement to water customers; (4) the allocation of Steelton water revenue requirement to water customers; and (5) the necessity for the development of a stormwater rate. OCA Exc. at 24,citing OCA St. 1 at 35-95. For all of the above reasons, the OCA disagrees with the ALJ’s FOF No. 141 and requests that the Commission reject FOF No. 141 in making its determination.

The OCA is also concerned that under the terms of the Settlement (Section B, Paragraph e., page 20), although the Company has agreed “to propose potential recovery and rate methodologies options for stormwater costs of combined sewer systems in its next general wastewater or combined water/wastewater base rate filing,” and that “[t]he proposals will include an analysis of recovery of such stormwater costs through various methodologies including the forms of separate stormwater rates, and a description of the customers to whom the rates would apply,” nothing in this provision nor the rest of the Settlement actually *requires* the Company to propose stormwater rates in its next base rate proceeding. OCA Exc. at 24-25; R.D. at 26-27. Thus, the OCA concludes its Exceptions on this matter by requesting that the Commission reverse the ALJ’s ruling that permits the Company to continue the inequitable collection of stormwater costs from wastewater and water customers without a clear directive that PAWC will commit to proposing stormwater rates and providing the requisite notice, in its next rate filing.

PAWC replies that the OCA’s Exception should be denied for two reasons. First, PAWC submits that the OCA did not refute the Company’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 assumed. And, 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.[[9]](#footnote-10) Thus, PAWC concludes its argument by asserting that the OCA has not furnished any valid reason to support its position on why the Company’s stormwater proposal in its next rate case needs to include a request for Commission approval of specific rates and charges. PAWC R. Exc. at 15‑16.

In its reply on this matter, I&E submits that the Settlement is in the public interest because, although it does not necessarily require PAWC to establish a stormwater rate in the next proceeding, it acknowledges that there is a need to further explore this issue. I&E Exc. at 14.

I&E further submits that it is not necessary for the Commission to order the Company to propose stormwater rates in its next base rate filing because: (1) there may not be sufficient time between now and when the Company files its next rate filing for the Company to establish a stormwater rate; (2) 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; and (3) it allows for the Parties to meet and discuss the options between rate cases so that the Parties have an opportunity to explore the various options in a less constrained timeframe than if it occurred in the context of a rate proceeding. I&E R. Exc. at 14.

##### Disposition

We agree with the Company and I&E that it is not necessary, currently, to direct the Company to file proposed stormwater rates in its next base rate filing. We are persuaded by the concerns expressed by the Company and I&E that there may not be enough time for the Company, either individually or in conjunction with other Parties, to develop separate stormwater rates before the Company’s next base rate case. Although the Company notes that there is nothing preventing the OCA from proposing stormwater rates in the Company’s next base rate proceeding, we are of the opinion that it would be more prudent if the Parties met to develop a set of reasonable rates outside the tight constraints of a base rate proceeding. And although, we are not directing the Company to file separate studies for each stormwater system in this Opinion and Order, we encourage the Parties to move swiftly to first determine the feasibility of implementing a separate stormwater rate. If it is deemed feasible, the Parties should continue to meet for the purposes of selecting an equitable rate design for storm rates.

With that said, we believe that the Settling Parties’ commitment to work toward resolving the issues surrounding the development of stormwater rates in conjunction with the terms and conditions in the Settlement is in the public interest. In this regard, it is worthwhile noting the following provision from the Settlement:

In accordance with settlement of its last base rate case, the Company presented separate revenue requirement studies for each CSS it owns and filed cost-of-service studies that separately identify stormwater costs for the PAWC’s Scranton, McKeesport and Kane CSS operations.51 In Paragraph 28 [of this Settlement], the Company has agreed to provide in future base rate filings one or more separate stormwater and wastewater cost-of-service studies of each of its CSS operations. This provision assures that the Commission and the parties in the Company’s next base rate case will have information related to all PAWC-owned CSSs comparable to the cost-of-service information developed and filed in this case.

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51 PAWC St. 1 (Nevirauskas), p. 10; PAWC St. 12 (Heppenstall), p. 5.

Considering the above, we are not persuaded by the OCA’s arguments that we should direct the Company to file a separate stormwater rate for our consideration in the next base rate case. However, based on our review of the OCA’s Exceptions and our review of the record in this proceeding, it is apparent that, contrary to FOF No. 141, the Settlement does not entirely address Mr. Rubin’s concerns concerning the allocation of stormwater costs in PAWC’s CSS rate zones. Therefore, we shall grant the OCA’s Exception No. 7, in part, and strike FOF No. 141 of the ALJ’s Recommended Decision, noting that this does not change our disposition above pertaining to the reasonableness of the Settlement on this matter.

#### b. Allocation of Wastewater Revenue Requirement to Water Operations (OCA Exception No. 9, OSBA Exc. No. 3)

##### Position of the Parties

In this filing, PAWC invoked Section 1311(c)[[10]](#footnote-11) of the Code, 66 Pa. C.S. § 1311(c), to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company’s wastewater revenue requirement from its total water and wastewater customer base.[[11]](#footnote-12)

As a signatory to the Settlement, the Company supported the terms and conditions in the Settlement related to wastewater revenue requirement allocation. Accordingly, under the Settlement, approximately $1.3 million (Step 1) and $1.2 million (Step 2) [[12]](#footnote-13) of the Steelton revenue requirement would be allocated to the cost of service of the Company’s other water operations in lieu of the $1.8 million (RY1) and 1.4 million (RY2) PAWC originally proposed. FOF 136; PAWC St. 4 at 32-33; PAWC St. 12 at 37.

The Company asserted that allocating wastewater revenue requirement to water operations as provided in the Settlement is in the public interest because it will mitigate the increases to the Company’s 76,000 wastewater customers with a modest effect on water customers’ bills of approximately $2.40 per month to an average residential customer.[[13]](#footnote-14) Additionally, the Company argued that the Settlement rates make reasonable movement toward the system average rate of return by the various customer classes as measured by PAWC’s cost of service studies. M.B. at 55-56.

I&E originally argued against the way the Company proposed to shift some of the wastewater revenue requirement from wastewater customers to water customers pursuant to Section 1311(c) of the Code. I&E provided arguments on how the resulting subsidy of wastewater rates should be reduced, how it can be reduced and recommended subsidy levels for each year of the Company’s proposed multi-year plan. In addition, I&E disagreed with portions of the Company’s proposed rate structure. I&E St. 3 at 6‑79; I&E St. 4 at 26-47.

Subsequently, after participating in negotiations with the Company and other Parties in the development of the proposed Settlement herein, I&E joined in as a signatory to the Joint Petition and recommended that the Commission adopt the Settlement.

The OCA, which is not a signatory to the Settlement, disputed PAWC proposed shift to the wastewater revenue requirement. The OCA witness, Mr. Rubin, proposed three revisions to the Company’s cost of service study for PAWC’s water operations excluding Steelton, which Ms. Constance E. Heppenstall accepted in her rebuttal testimony. PAWC St. 12-R at 2-3; PAWC Exhs. CEH-1R (Exhibit 12-A Revised). Mr. Rubin did not contest the Company’s cost of service study method for PAWC’s CSS operations but did disagree with the manner in which the Company allocated stormwater-related costs to rate classes in the cost of service studies for PAWC’s CSS operations.[[14]](#footnote-15) OCA St. 1 at 46-50. Mr. Rubin contended that collecting stormwater costs based on water consumption or number of customers, regardless of a property’s actual contribution to stormwater inflow, is unfair and inconsistent with cost causation principles. FOF No. 139. As such, Mr. Rubin proposed an “across-the-board” increase for customers served by the Scranton, McKeesport and Kane CSS operations and requested that the Commission require PAWC to propose a separate stormwater rate in the Company’s next base rate case. FOF No. 128; OCA St. 1 at 41-49,49-50; 87-89; 91‑93.

Regarding the allocation of the total wastewater revenue requirement to water operations, the OCA disagreed with the Company’s proposal to invoke the Commission’s authority under Section 1311(c) of the Code[[15]](#footnote-16) to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company’s wastewater revenue requirement from its total water and wastewater customer base. FOF No. 130; OSBA St. 1 at 16; OCA St. 1 at 64.70. Instead, the OCA recommended that the Commission require PAWC’s investors to bear the entire cost to provide a subsidy of approximately $16.7 million to wastewater customers in the service areas of the four wastewater systems the Company purchased pursuant to the Commission-approved Section 1329 acquisitions.

The OSBA, also not a signatory to the Settlement, disagreed with the Company’s proposed allocation of applying wastewater revenue requirement to its water customers so that the effects of revenue increase to its wastewater customers would be mitigated. FOF 130; OSBA St. 1 at 64-70. In particular, the OSBA witness Mr. Brian Kalcic disagreed with: (1) the overall magnitude of PAWC’s proposed shift in wastewater revenue responsibility to water customers; and (2) the manner in which additional revenue responsibility is allocated to water service classes. OSA M.B. at 18, citing to OSBA St. 1 at 2, 14-15. Mr. Kalcic proposed alternatives to the Company’s proposed wastewater rates and allocation shifts of wastewater revenues to water customers. OSBA at M.B. at 15-22.

##### Recommended Decision

After considering the evidence and the competing arguments of the Settling and Non-Settling Parties on the proposed revenue allocations, rate design, and wastewater subsidy, the ALJ found that the Joint Petition concerning the allocation of wastewater revenue requirement to the Company’s water operations is in the public interest and should be granted. R.D. at 126. The ALJ was persuaded by the Settling Parties and based his recommendation on Paragraph No. 75(c) of the Settlement as set forth below:

c. The Settlement Rates will allocate the agreed upon combined water and wastewater revenue requirement to each rate zone and customer class in a manner that is reasonable in light of the rate structure/cost of service positions of the Joint Petitioners and implement Section 1311(c) of the Public Utility Code in a manner that is agreeable to the Joint Petitioners.

Settlement at 22.

##### Exceptions and Replies (OCA Exception No. 9, OSBA Exc. No. 3)

In its Exception No. 9, the OCA disagrees with the ALJ’s determination that the Settlement’s allocation of wastewater revenue requirement to water operations pursuant to Section 1311(c) of the Code, 66 C.S. § 1311(c), is reasonable. OCA Exc. at 26. The OCA notes that the Settlement shifts wastewater revenue requirements of $29,296,281 in Step 1, and $21,480,685 in Step 2, (a combined total of $50,776,966) to water customers pursuant to Section 1311(c), but neither the Settlement nor the Statements in Support provide any explanation of how that level of subsidy meets the public interest requirement of Section 1311(c). OCA Exc. at 27.

Next, the OCA submits that Section 1311(c) of the Code permits but does not require the Commission to allocate a portion of the wastewater revenue requirement to a combined water and wastewater customer base if it is in the public interest. The Company notes that the issue of how the Commission should consider proposals pursuant to 1311(c) has never been litigated, because although the Company proposed to shift wastewater revenues to Water Zone 1 customers in its last two rate cases in 2013 and 2017, both of those cases were resolved by settlement. OCA Exc. at 27-28.

The OCA avers that this is the first case that includes both Section 1329 acquisitions and a request to subsidize those acquisitions. In this filing, PAWC’s proposal would require its Water Zone 1 customers to pay a substantial subsidy primarily due to seven acquisitions completed by PAWC to date under Section 1329 of the Code. Thus, the OCA is concerned because, as it argued in this proceeding, using Section 1311(c) in combination with a Section 1329 acquisition “might result in water customers throughout the Commonwealth subsidizing municipal government purposes in a few locations while also promoting profit growth for utility shareholders.” OCA Exc. at 28, citing OCA St. 1 at 64. The OCA notes that its witness, Mr. Rubin recommended the Commission permit a limited subsidy from Rate Zone 1 water customers to be paid to each 1329 rate area and argued that the subsidy should not compensate the Company for the full return on the purchase price increment it paid over the net original cost of the property. OCA Exc. at 28, citing OCA St. 1 at 65-70; OCA M.B. at 74-76.

For all of the above reasons, the OCA concluded that there is no substantial evidence to show that the Settlement’s allocation of wastewater revenues to water customers is in the public interest. OCA. Exc. at 29.

In reply to the OCA’s Exceptions, the Company first asserts that the OCA’s exception essentially is asking the Commission to 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.[[16]](#footnote-17) PAWC R. Exc. at 18. The Company objects to the OCA’s position in that it would maintain a reduction to wastewater rates without a corresponding increase to water revenue requirement and force the Company’s shareholders to absorb the difference. PAWC R. Exc. at 19.

The Company also submits that the adoption of the OCA’s recommendation 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 shareholders any compensation for the use of their funds.[[17]](#footnote-18) PAWC R. Exc. at 19.

PAWC further submits that neither the statutory language of 1311(c) nor Section 1329 includes a valid legal basis for such “an unprecedented and facially confiscatory result.” Rather, Section 1329(c) expressly states that when the Commission has approved a fair market value purchase price that “ratemaking base . . . shall be incorporated into the rate base of the acquiring public utility during the acquiring public utility’s next base rate case.” Thus, PAWC avers that contrary to the OCA’s position, the Commission does not have the legal authority to exclude any portion of the “ratemaking rate base” of the Section 1329 acquisitions from the Company’s revenue requirement. PAWC R. Exc. at 19.

The Company contends that the OCA’s perspective is promoting an erroneous interpretation of the “public interest” provision of 1311(c) that, if adopted, would unduly restrict the Commission’s discretion, and directly contradict the Commission’s prior holding that the “public interest” must consider impacts on all affected parties. Therefore, for all the reasons above, the Company requests the Commission to dismiss OCA’s Exception No. 9. PAWC at 19.

I&E also disagrees with the OCA’s arguments. In its reply, I&E submits that 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. I&E further notes that 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. I&E explained, at first, it was originally 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.[[18]](#footnote-19) I&E R. Exc. at 12. I&E reiterates its position that 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[[19]](#footnote-20)* 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.” *Id.*

In its Exception No. 3, the OSBA argues that the ALJ erred in adopting the Settlement’s terms and conditions that shift revenue requirement from the Company’s wastewater and Steelton ratepayers to its non-Steelton water service customer. OSBA Exc. at 6,citing the R.D. at 60-61. The OSBA submits that it had shown that PAWC’s original proposal to allocate the revenue shortfall to water classes, based on the class cost of service results in the applicable wastewater and Steelton cost of service studies, was inconsistent with the method used by PAWC in determining the overall magnitude of the revenue shortfall. *Id.* at 6-7,citing OSBA M.B. at 20. The OSBA avers that it recommended that the Company should be required to establish rates so that each non-Steelton water service class would be responsible for paying 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. *Id.* Since no Party challenged the OSBA’s recommended allocation methodology after its introduction, the OSBA is requesting that the Commission adopt the OSBA’s methodology for allocating wastewater revenue requirements to water service classes in its final decision in order to preclude this issue from arising in future cases. *Id.* at 7.

PAWC retorts that even though the OSBA did not except to the ALJ’s recommendation which adopted the revenue allocation and rate structure reflected in the Settlement, the OSBA is requesting the Commission to specifically determine that the method proposed by its witness is the correct method to allocate the wastewater and Steelton water revenue shortfall to water service classes in order to foreclose possible reconsideration of an alternative methodology in future rate cases. PAWC R. Exc. at 17.

PAWC contends that the OSBA’s proposed allocation procedure was adopted for purposes of developing the Settlement rates and, therefore, the OSBA’s contention is moot. Nevertheless, PAWC submits that the OSBA’s Exception No. 3 should be rejected because it is premature at this time to decide that the methodology forwarded by the OSBA witness should be written in stone and, therefore, never to be revisited in any future case regardless of how the facts may change. *Id.*

##### Disposition

For all the reasons expounded by the Company and I&E in their Reply Exceptions, we shall deny the OCA’s Exception in which it argues that the ALJ’s recommendation is unreasonable because it would shift most of the costs of the Section 1329 acquisitions to its statewide water customers pursuant to Section 1311(c).[[20]](#footnote-21)

With regard to the OCA’s argument that the Commission should adopt its position which would permit a limited subsidy from Rate Zone 1 water customers to be paid to each Section 1329 rate area, but would not compensate the Company for the full return on the purchase price increment it paid over the net original cost of the property,[[21]](#footnote-22) we agree with the Company’s argument that the OCA’s proposal would violate the Company’s 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 shareholders any compensation for the use of their funds.[[22]](#footnote-23) PAWC R. Exc. at 19.

The Company also cites to Section 1329(c)[[23]](#footnote-24) that expressly states that when the Commission has approved a fair 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.” The Company further notes that it is uncontested that all the wastewater acquisition 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 purchase price of the average of the two Utility Valuation Engineers’ appraisals (as modified by approved settlements) in each instance, constituted the “ratemaking rate base.” In this regard, we note that once a selling utility’s rate base is incorporated into the acquiring utility’s rate base, that rate base is no different than any of the Company’s other rate base it acquired prior to the addition of the acquired company’s rate base. Accordingly, the acquiring utility is just as entitled to earn a reasonable rate of return on the new rate base consistent with standard ratemaking principles. The OCA’s position to require that the Company’s stockholders subsidize the unrecovered wastewater revenue requirement essentially would take away the Company’s ability to earn any permitted return on some of the newly acquired rate base in violation of *Bluefield*.

We also agree with the Company’s argument that, in the circumstances, applying Section 1311(c) in conjunction with Section 1329 is in the public interest because otherwise, larger viable public utilities would be discouraged from acquiring municipal and wastewater systems and contravene the legislative intent and the Commission’s policy of encouraging consolidation and regionalization.[[24]](#footnote-25)

Accordingly, we shall deny the OCA’s Exceptions in which it requests that we reject the ALJ’s recommendation as unreasonable because it would shift most of the costs of the Section 1329 acquisitions to its statewide water customers pursuant to Section 1311(c).

Based on our discussion, *supra*, we shall deny the OCA’s Exception No. 9, and adopt the ALJ’s recommendation regarding the allocation of wastewater revenue requirement allocation.

Next, we address the OSBA’s Exception No. 3, in which the OSBA requests that we specifically determine, in this Opinion and Order, that the OSBA’s methodology is the correct method for allocating these costs to water service classes to preclude this issue from arising in future cases.

We are of the opinion that it would not be prudent to make such a declaration in this Opinion and Order for several reasons. First, as argued by the Company, the OSBA’s proposed allocation procedure was adopted for purposes of developing the Settlement rates, and it is generally accepted that issues determined through Settlements are not to be used as Commission precedent in other cases addressing the same or similar issue. In addition, in previous cases, we have held that cost of service and revenue allocation analyses must reflect the exercise of judgment and are as much a matter of art as of science.[[25]](#footnote-26) Accordingly, even if this determination was made outside the context of a Settlement, to declare that a single methodology be used would be inconsistent with standard cost of service and revenue allocation practices. For these reasons, the OSBA’s Exception No. 3 is denied.

Accordingly, we shall deny the OCA’s Exception No. 9 and the OSBA’s Exception No. 3 and adopt the ALJ’s recommendation with regard to the allocation of wastewater revenue requirement allocation.

#### Rate Design (OCA Exception No. 8)

##### i. Position of the Parties

PAWC’s witness, Ms. Heppenstall, submitted eight separate cost of service studies, two of which relate to the Company’s water operations and six of which relate to its wastewater operations.[[26]](#footnote-27) FOF No. 123; PAWC St. 12 at 3-5. The Company subsequently revised the cost of service study for PAWC’s water operations excluding Steelton based on proposed revisions suggested by the OCA.

In designing rates for the Company’s water rate zones, Ms. Heppenstall used the following guidelines:

(1) increase customer charges to recover, at a minimum, the direct customer costs; (2) increase private fire protection charges to recover the cost of service; (3) increase the public fire hydrant charges in all rate zones that are below 25% of the public fire protection cost of service to a rate that is 25% of that cost of service; and (4) increase rates by customer classification in a manner that moves the revenues recovered from each classification toward the indicated cost of service where possible including the combined wastewater revenue requirement and Water Steelton Operations revenue requirement allocated to water operations.

*Id*.

PAWC originally proposed a MYRP in which it proposed base rate increases of 92.4 million, or 12.9%, in RY1, and $46.2 million, or 5.8% in RY2, for a total increase of $138.6 million. As proposed, the RY2 rates would remain in effect until the conclusion of PAWC’s next base rate filing. R.D. at 4, 36; PAWC St. 1 at 6-7; 17‑28.[[27]](#footnote-28) In addition, the Company, for the first time, invoked the Commission’s authority under Section 1311(c) to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company’s wastewater revenue requirement from its total water and wastewater customer base.

Subsequently, the Company, as a signatory to the Joint Petition Settlement, agreed with the terms of the of the Settlement as it pertains to revenue allocation and the resulting rate structure as highlighted below:

● The Settlement Rates, which have been established upon the Company’s originally filed *pro forma* present rate revenue level, are designed to produce additional annual water and wastewater operating revenue of $70.5 million[[28]](#footnote-29). The $70.5 million increase will be offset by an annualized credit of $10.5 million[[29]](#footnote-30) in each of years 2021 and 2022, beginning on the effective date of the Settlement Rates consistent with the summary of revenue increase included in Appendix D to the Settlement. Settlement at 19, ¶ 27; 8‑9, ¶ 23.

● The total net increase will be implemented in two installments and the Settlement Rates are designed to produce: (1) a net increase of $40 million ($50.5 million increase in base rates less a $10.5 million credit) on the effective date of the Settlement Rates (“Step 1 Rate Increase”); and (2) a second installment effective on January 1, 2022, that increases base rates by $70.5 million, which will be off-set by a credit of $10.5 million, for a net total increase of $60 million for the twelve months ending December 31, 2022 (“Step 2 Rate Increase”). The credit will cease to apply on January 28, 2023. Settlement at 25, ¶25.

● The Settlement Rates are designed to produce: (1) approximately $766 million in total net annual combined water and wastewater revenue (including Other Revenue) during the period commencing on the effective date of the Settlement Rates; (2) approximately $786 million in total net annual combined water and wastewater revenue (including Other Revenue) during the period commencing January 1, 2022. An annualized credit of $10.5 million per 12-month period will apply for the first 24 months rates are in effect (January 28, 2021 through January 28, 2023) in the form of a negative surcharge to be applied equally to all classifications of water customers. Settlement at 9, ¶ 26.

The changes agreed upon in the Company’s Water Tariff (Appendix A to Settlement) by the Settling Parties for rate structure, rate design, and distribution of the revenue increase are highlighted below:

● Rate Zone 1 service charge for residential, commercial and municipal customers with 5/8-inch meters will be $17.00 per month (2021) and $17.50 per month (2022) in lieu of the $18.00 (2021) and $18.50 (2022) service charges proposed by the Company. The 5/8-inch service charge for the Industrial class in Rate Zone 1 under the Settlement Rates will be $25.40, and the same percentage increase will be applied for all other meter sizes. Settlement at 18, ¶ a; Settlement Appendix A.

● The metered rates for all classes of customers in Rate Zone 2 (Nittany, Sutton Hills, All Seasons, Balsinger and Berry Hollow) have been consolidated with Rate Zone 1under the Settlement Rates. Settlement at 18, ¶ b; Settlement Appendix A.

● The Company currently has a separate Rate Zone 3 for its McEwensville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 3 have been equalized with Rate Zone 1. Settlement at 18, ¶ c; Settlement Appendix A.

● The Company currently has a separate Rate Zone 4 for its Turbotville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 4 have been equalized with Rate Zone 1. Additionally, usage charges for the residential class in Rate Zone 4 have been equalized with Rate Zone 1 in 2022. Settlement at 18-19, ¶ d; Settlement Appendix A.

● The Company currently has a separate Rate Zone 5 for its Steelton Water Operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 5 have been increased. Settlement at 19, ¶ e; Settlement Appendix A.

● Appendix G contains billing comparisons showing the impact on the bill of an average customer in each major general service rate class if the Settlement Rates are approved. Settlement at 19, ¶ f; Settlement Appendix A.

The changes agreed upon in the Company’s Wastewater Tariff (Appendix B to Settlement) by the Settling Parties for rate structure, rate design and distribution of the revenue increase are highlighted below:

● The Company currently has ten wastewater rate zones. Under the Settlement Rates, existing wastewater Rate Zone 4 and future Rate Zone 11 will be consolidated with wastewater Rate Zone 1. The other eight rates zones will consist of Rate Zone 2 (New Cumberland), Rate Zone 3 (Scranton), Rate Zone 5 (Franklin), Rate Zone 6 (McKeesport), RateZone 7 (Sadsbury), Rate Zone 8 (Turbotville), Rate Zone 9 (Exeter) and Rate Zone 10 (Kane). Settlement at 19, ¶ a.

● Under the Settlement Rates, Rate Zones 1, 2, 4, 6, 8, and 9 service charge for the residential class will be $11.00 per month and the service charge for non-residential classes in Rate Zones 1, 2, 6 and 9 will be $27.50 per equivalent dwelling unit (“EDU”). The Settlement Rates for all classes of customers and classes of wastewater service for Rate Zones 1-6 and 8-10 are set forth in the applicable portions of the Wastewater Tariff attached as Appendix B. Settlement at 19, ¶ b.

● Appendix H contains billing comparisons showing the impact on the bill of an average customer in each major rate class if the Settlement Rates are approved. Settlement at 19, ¶ c.

● Combined Water and Wastewater Revenue Requirement: Pursuant to Section 1311(c) of the Public Utility Code and the Commission’s Implementation Order in Docket No. R‑2013‑2355276, under the Settlement Rates a portion of the wastewater revenue requirement totaling $29,296,281 (Step 1 Rate Increase) and $21,480,685 (Step 2 Rate Increase) is being allocated to water customers, as shown in Appendix C, Water Operations Excluding Steelton). Settlement at 19, ¶ d.

I&E disagreed with portions of the Company’s originally proposed revenue allocation and the resulting rate structure. I&E offered testimony on how the resulting subsidy of wastewater rates should be reduced, how it can be reduced and recommended subsidy levels for each year of the Company’s proposed multi-year plan. I&E St. 3 at 6‑79; I&E St. 4 at 26-47. However, after participating in negotiations with the Company and other Parties in the development of the proposed Settlement herein, I&E joined in as a signatory to the Joint Petition and recommended that the Commission adopt the Settlement.

In support of the OCA’s recommendation that the Commission should not permit any rate increases during the COVID-19 Pandemic emergency, the OCA’s witness, Mr. Rubin, offered the theory that the Commission can set utility rates based on general economic conditions in a “null” zone outside of the traditional ratemaking zone of reasonableness. R.D. at 38, FOF Nos. 15, 16, 17; OCA St. 1 at 10, 22, 29; PAWC St. 14-R at 8-9.

As noted, Mr. Rubin proposed adjustments to the Company’s water cost of service studies that were accepted by the Company. OCA M.B. at 60. The OCA did not address the Company’s proposed revenue requirement in this proceeding. The OCA also argued against parts of the Company’s rate design proposals and proffered various revisions for consideration. Mr. Rubin also argued for various revisions to the Company’s originally filed rate structure for its water and wastewater operations. OCA M.B. at 61-67. Mr. Rubin further requested that the Commission adopt his proposed Scale-Back approach if the Commission reduces the proposed revenue requirements in rates zones that are being subsidized by Water Zone 1 customers.[[30]](#footnote-31) OCA M.B. at 66-67. The OCA also advocated applying an “across-the-board” rate increase for customers served by the Scranton-McKeesport and Kane combined systems and that the Company propose a separate stormwater rate for CSS operation in the Company’s next rate case. R.D. at 62;OCA St. at 41-49; 49-50; 87-89; 91-93.

Regarding the Settlement, to which OCA was not a signatory, Mr. Rubin recommended that it should not be approved because the proposed tariffs and proofs of revenues appended to the Joint Petition do not provide sufficient information to determine whether the Settlement rates are “just and reasonable.” OCA Comments at 8‑10.

##### ii. Recommended Decision

In the Recommended Decision, the ALJ noted that under the Settlement Rates, PAWC agrees to allocate $29.3 million (Step 1) and $21.5 million (Step 2) of wastewater revenue requirement to water operations instead of $32.9 million (RY1) and $35.2 million (RY2) that PAWC originally proposed. FOF No. 131. The ALJ agreed that the reduced allocation of total wastewater revenue requirement to water operations pursuant to Section 1311(c) under the Settlement is in the public interest.

##### iii. OCA Exception No. 8 and Replies

In its Exception No. 8, the OCA generally asserts that the ALJ’s determinations regarding the proposed rate design, distribution of the increase, and the wastewater subsidy[[31]](#footnote-32) are not supported by the record. OCA Exc. at 25. The OCA contends that although the information provided in the Settlement and its Appendices[[32]](#footnote-33) describes the consolidation of rate zones and the customer charges, they do not provide any explanation on how the customer and consumption charges were determined and the proof of revenues comparisons do not have references tying the information back to PAWC’s exhibits. OCA Exc. at 26. The OCA also claims that Appendices G and H of the Settlement contain bill comparisons that show the average customer’s present rates and the proposed Settlement’s impact on an average customer, but they do not include the proposed rates for the average customer. *Id*.

Thus, from a rate design perspective, the OCA opines that the supporting information in the Settlement does not provide sufficient detail to validate whether the resulting rates are just and reasonable because it is not possible: (1) to determine the basis in the Settlement for the proposed changes; and (2) to verify how the Settlement allocations provide for any movement toward the system average rate of return. *Id.* at 26, citing OCA M.B. at 61-67; OCA Comments in Opposition to Settlement at 8-12; OCA Tables A.1-A.3; OCA St. 1 at 88-94.

In its Replies, PAWC rejoins that contrary to the OCA’s assertions that the Settlement’s supporting documents are lacking, 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.[[33]](#footnote-34) PAWC R. Exc. at 16.

The Company further asserts that the OCA’s claim that the Joint Petitioners did not explain the basis for the rate structure and revenue allocation in the Settlement is incorrect and contrary to the evidence, because Appendix A to the Company’s Comments shows that 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. PAWC R. Exc. at 16.

PAWC avers that it addressed the OCA’s alternative rate design proposals before the ALJ when it explained how the Settlement’s rate structure would achieve an appropriate balance among the competing interests of all customer classes and would allocate the revenue increase fairly and reasonably.[[34]](#footnote-35) The Company further submits that the Settlement rates reflect the Commission-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 cost of service study. The Company asserts that the OCA’s discussion of this issue ignores the fact that many of Mr. Rubin’s recommendations are reflected in the Settlement rates.[[35]](#footnote-36) For all of these reasons, the Company requests that the Commission affirm the ALJ’s conclusion that the Settlement rates are “just, reasonable and in the public interest” and dismiss the OCA’s Exception No. 8. PAWC R. Exc. at 17.

In its Replies, I&E responds to the OCA’s Exception No. 8 by first stating that the way residential customer charges[[36]](#footnote-37) were arrived at in this proceeding was no different than in any other settlement proceeding. I&E Exc. at 10. In this proceeding, I&E notes that the proposed customer charges, which the Settling Parties agreed upon, are the same customer charges that I&E proposed in this proceeding (*i.e.*, $17.00 in Rate Year 1 and $17.50 in Rate Year 2) prior to becoming a signatory to the Settlement. According to I&E, those customer charges in the Settlement were supported by the direct customer cost analysis which resulted in lower rates than those proposed by the Company, who relied upon the fully allocated customer cost analysis. I&E R. Exc. at 10‑11,citing I&E St. No. 4 at 34-39. Thus, I&E asserts that the customer charges for each of the two Rate Years in the Settlement are clearly supported by record evidence. *Id.*

I&E acknowledges that although it is true that the specific customer charge components were not agreed upon, it is not aware of any settled base rate case in recent Commission history in which the specific components of the customer charge were agreed upon. *Id.* at 11. Thus, I&E asserts that there is no reason to deny the customer charge just because the individual cost components were not expressly agreed upon by the Parties to the Settlement.

In concluding its response on this matter, I&E asserts that to adopt the OCA’s position that a customer charge cannot be accepted as just and reasonable without a breakdown of the components would have a chilling effect on future base rate case settlements and is inconsistent with prior Commission precedent. *Id*. at 11. I&E asserts that in “black box” Settlements, such as the Settlement in this case, the specific components of the amounts agreed to are not necessarily specified in the Settlement, just as they would not have been had the OCA been a signatory to the Settlement. Nevertheless, I&E submits that the proposed customer charges in the black box Settlement are exactly the same charges proffered by I&E in testimony and that, contrary to the OCA’s allegations, are supported by ample record evidence. *Id.* at 13.

##### v. Disposition

Based on our review of the supporting information contained in the record and the supporting information submitted with the Settlement, we find that the ALJ’s determinations regarding rate design are sufficiently supported by the evidentiary record. Accordingly, based on our discussion below, we find that the OCA’s and the OSBA’s arguments against the ALJ’s recommendation concerning this matter are without merit.

In reaching this determination, we have reviewed the supporting documents attached to the Settlement, including the Appendices and the Statements in Support provided by the Settling Parties, with regard to the rate design and revenue allocation. Based on our review, we find that the ALJ’s recommendation to adopt the rate structure and revenue allocations contained in the Settlement was based on a fair and reasonable foundation. We make this determination consistent with the manner in which we have historically approved Settlements. Parties often disagree with the specific components of a “black-box” Settlement, and there is a give-and-take negotiation process in which one party concedes his position on one matter in order to gain an agreement on another. The negotiations continue on the contested issues among the parties until some or all of the issues have been addressed. The results of the negotiations are then incorporated into a Settlement, which may be unanimous or non-unanimous, and presented to the Commission for consideration. Whether the Settlement is unanimous or non-unanimous, it is understood that the specific cost components of a particular charge or service in the context of a Settlement, may not be the same among the parties. However, in the spirit of reaching a negotiated Settlement, the signatories to this Settlement agree with the results because each Party views the overall resulting rates, terms and conditions of the Settlement as just, fair and reasonable, and consistent with the ratemaking principles of gradualism and avoidance of rate shock to customers. Thus, the Settling Parties are willing to accept these aspects of the Settlement process, realizing, of course, that such cost components (and other terms and conditions) adopted by the Settlement cannot be used as Commission precedent in future rate case proceedings or other cases with similar issues. Therefore, as I&E has reasoned in its reply to the OCA’s Exception No. 8, to adopt the OCA’s position that a specific charge or service cannot be accepted as just and reasonable without a break-down of the components would have a chilling effect on future rate base rate case settlements and is inconsistent with prior Commission precedent. I&E R. Exc. at 11.

The OCA specifically argued that the Settlement and Appendices do not provide any explanation of how the customer charges were determined. OCA Exc. at 26. Notwithstanding the OCA’s statement here, I&E has adequately demonstrated that the record is clear with regard to the customer charges because 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, Ethan Cline, in his Direct Testimony.[[37]](#footnote-38) I&E R. Exc. at 10-11.

We also agree with the Company that the ALJ has duly considered the OCA’s alternative rate design proposals in reaching his determination. PAWC R. Exc. at 16-17. The OCA alleges that the Settlement fails to provide any schedules that show how the Settlement allocations provide for any movement toward the system average rate of return. With regard to the OCA’s concern about the lack of supporting schedules, we point to the Company’s reply in which it noted that 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.[[38]](#footnote-39) The Company also notes that the Settlement rates substantially reflect the same class revenue allocation percentages and movement toward the cost of service for each classification in PAWC’s originally proposed rates for 2021, and thus are reasonable. PAWC R. Exc. at 16.

For all of the above reasons, we shall deny the OCA’s Exception No. 8, and adopt the ALJ’s recommendation regarding this matter.

### 7. Low-Income Customer Assistance

#### H2O Discount Program Design (OCA Exception No. 10 and CAUSE-PA Exception No. 2)

##### i. Position of the Parties

PAWC provided that its low-income program, collectively referred to as the “Help to Others Program” or “H2O Program,” currently provides: (1) an 85% reduction in its service charge for water customers at or below 150% of the Federal Poverty Level (FPL); (2) a 20% bill discount for wastewater customers at or below 150% of the FPL; (3) grants of up to $500 per year for water and wastewater customers; and (4) water-saving device kits and educational programming. PAWC M.B. at 59,citing PAWC St. 1 at 46; PAWC St. 17-R at 3. PAWC cited increasing economic pressure on low-income customers, particularly those customers impacted by the COVID-19 Pandemic Emergency, to propose the following changes to the low-income discount program: (1) the addition of a 10% discount off the volumetric charge for water customers; and (2) increasing the total wastewater bill discount from 20% to 30%. PAWC M.B. at 59-60, citing PAWC St. 4 at 46-47.

The OCA witness, Mr. Roger D. Colton, recommended that PAWC maintain its structure of providing a discount on the customer charge and volumetric charge for water service and a volumetric discount for wastewater service. Mr. Colton further recommended that, rather than using a uniform “across-the-board discount,” where the discount does not vary by income, PAWC should adopt a “three-tier discount,” where PAWC would retain its current discount proposal for customers with income at or above 100% of the FPL but provide modified discounts for customers with income levels at or below 50% of the FPL and between 50% and 100% of the FPL. OCA M.B. at 84; OCA St. 4 at 4, 24-25.

Mr. Colton also proposed that PAWC incorporate an arrearage management program (AMP) in its low-income bill discount program (BDP). Mr. Colton explained that the AMP should be designed through a multi-party stakeholder consultative process, adding that the Commission’s Bureau of Consumer Services (BCS) should be invited to participate as a stakeholder. Mr. Colton noted that PAWC should be required to present an AMP to the Commission for review and approval within six months after a final order in this proceeding. OCA M.B. at 84; OCA St. 4 at 4, 29-30, 34-35.

The CAUSE-PA’s witness, Mr. Mitchell Miller, recommended that PAWC be required to incorporate an arrearage forgiveness program, which would: (1) allow H2O participants to earn forgiveness on debt accrued prior to enrollment in the H2O discount program; (2) transition the discount offered under the H2O Program to a percentage of income program (PIP), with a target affordability at 2%, 2.5%, and 3% of household income for those at 0%-50%, 51%-100%, and 101%-150% of the FPL, respectively; and (3) provide for the adoption and implementation of a PIP and arrearage forgiveness component within two years of a final order in this case, or no later than the effective date of PAWC’s 2022 rate increase approval. CAUSE-PA M.B. at 40; CAUSE‑PA St. 1 at 63, 65, 70.

##### ii. **Recommended Decision**

The ALJ noted that, although implementing an arrearage forgiveness program would be difficult for PAWC due to the inability of its current billing systems to timely collect the necessary data, PAWC agreed that it will present an AMP to the Commission for review and approval no later than six months after a final order in this proceeding. R.D. at 66, FOF Nos. 158-159, citing PAWC St. 4-R at 17; CEO Stipulation at ¶ 11.

Regarding the OCA and the CAUSE-PA recommendations that PAWC should offer tiered discounts, the ALJ found that PAWC is not capable of implementing a tiered discount program because it currently does not have the necessary information to accurately incorporate a tiered bill discount into its bill analysis. The ALJ found that PAWC does not have a mechanism in place to request that participants update their income information and that it does not maintain adequate information to categorize customers into tiers. R.D. at 66-67, FOF No. 160 (citing OCA St. 4 at 4, 24-25), FOF No. 161 (citing CAUSE-PA St. 1 at 63) and FOF No. 163 (citing PAWC M.B. at 61).

##### iii. OCA Exception No. 10 and Replies

In its Exception No. 10, the OCA challenges the ALJ’s finding that PAWC is incapable of implementing the OCA’s recommendation of a tiered discount program because the Company does not have the necessary information to categorize customers into tiers or to request that participants update their income information. OCA Exc. at 29, citing R.D. at 66-67, FOF No. 163. The OCA argues that PAWC has demonstrated it is able to collect the necessary data because it obtains income information from customers to determine their eligibility for the BDP. *Id.*, citing OCA St. 4SR at 7-9. Accordingly, the OCA requests that the Commission adopt its recommendation. *Id.*

In its Exception No. 2, CAUSE-PA asserts that, in light of the ongoing economic stress caused by the COVID-19 Pandemic Emergency, it is unjust, unreasonable and contradictory to the public interest to allow PAWC to continue to charge its low-income customers unaffordable rates. The CAUSE-PA posits that the Commission should require PAWC to adjust the design of its H2O Program to provide equitable assistance and affordable rates to economically vulnerable consumers. Accordingly, the CAUSE-PA requests that the Commission amend the Recommended Decision and require PAWC to implement a PIP structure for its H2O customers. CAUSE-PA Exc. at 9, 12, citing CAUSE-PA M.B. 40-42; CAUSE-PA R.B. at 16-21.

Regarding the ALJ’s recommendation that the Company is not able to offer a tier discount at this time, the CAUSE-PA repeats its recommendation that, within two years of a final order in this case, or no later than the effective date of PAWC’s 2022 rate increase approval, PAWC be ordered to implement the CAUSE-PA proposed PIP that connects discount levels to customers’ ability to pay at 2%, 2.5%, and 3% of household income for those at 0%-50%, 51%-100%, and 101%-150% of the FPL, respectively. CAUSE-PA Exc. at 10-12, citing CAUSE-PA M.B. at 40.

Regarding the Company’s proposed changes to its Help to Others or H2O Program, the CAUSE-PA submits that the H2O bill discount participants, especially those with household income at or below 50% of the FPL, experience water and wastewater burdens of more than 4.5% of their household maximum affordability.[[39]](#footnote-40) The CAUSE-PA asserts that PAWC’s proposed additional discount offered to H2O participants and incremental improvements to the BDP would not be sufficient to target rate relief that addresses unaffordability issues faced by low-income customers. CAUSE-PA Exc. at 10-11 (citing CAUSE-PA M.B. at 34-36; CAUSE-PA St. 1 at 34-35). Moreover, the CAUSE-PA notes that under the PAWC’s proposed rates and discount levels, customers with a household income at or below 50% of the FPL would experience a combined household water and wastewater burden in excess of 8%. CAUSE-PA Exc. at 11 (citing CAUSE-PA M.B. at 36-37).

The CAUSE-PA also contends that although the Settlement reduces the overall revenue increase that such customers would experience, the discrepancy in affordability levels is attributed to the current structure of the discount under the H2O Program, which is the same regardless of whether a customer has a household income at, or in between, 0% FPL or 150% FPL. CAUSE-PA Exc. at 11 (citing CAUSE-PA M.B. at 36-37). The CAUSE-PA asserts that PAWC’s fixed discount structure resulted in a combined household water and wastewater burden of more than 10% for customers with the lowest income levels and the highest usage levels. CAUSE-PA Exc. at 11 (citing CAUSE-PA M.B. at 38, Appendix D).

The CAUSE-PA maintains that the structure of the discount offered under the H2O Program does not produce fair results, particularly for customers at the lowest end of the FPL, customers with large families and high usage levels, and low-income customers challenged by the COVID-19 Pandemic Emergency. CAUSE-PA Exc. at 11 (citing CAUSE-PA M.B. at 38-40; CAUSE-PA R.B. at 16-21). The CAUSE-PA details that half of adults in households with income of less than $25,000, and who are unemployed due to the COVID-19 Pandemic Emergency, lack the “confidence” that they can pay their next month’s rent or mortgage, compared to 8.4% of adults in households with incomes of more than $100,000. CAUSE-PA Exc. at 11-12 (citing CAUSE-PA M.B. at 16). The CAUSE-PA adds that for such customers, high water and wastewater burdens exacerbate the economic crisis and leave little income to pay for necessities. CAUSE-PA Exc. at 12 (citing CAUSE-PA M.B. at 39).

In its Replies to both the OCA’s Exception No. 10 and the CAUSE-PA’s Exception No. 2 concerning the design of the H2O Program, PAWC contends that the ALJ properly recognized that PAWC is unable to implement or adopt a tiered-discount program. PAWC maintains that it does not have the information necessary to incorporate a tiered bill discount into its bill analysis nor does it have a mechanism in place to obtain such information. PAWC R. Exc. at 20 (citing PAWC St. 4-R at 15).

PAWC avers that just because the Company can obtain some data from customers, the OCA’s suggestion that PAWC can procure data to implement a tiered-discount program is unreasonable. PAWC R. Exc. at 20 (citing OCA Exc. at 29). Moreover, PAWC asserts that the affordability analyses on which the OCA and the CAUSE-PA base their recommendations are not accurately supported because they overestimated the number of low-income customers in PAWC’s service territory and made no attempt to identify the actual number of customers in the different FPL categories. PAWC R. Exc. at 20 (citingPAWC St. 1-R at 77-79). In addition, PAWC contends that the OCA and the CAUSE-PA did not demonstrate that PAWC’s current discount “when coupled with the multitude of actions PAWC has volunteered to undertake” is inadequate or unreasonable. *Id.*

##### iv Disposition

PAWC witness, Ms. Everette, testified that PAWC currently does not have the ability to accurately incorporate a tiered discount into its rate structure because it does not have the necessary information to correctly categorize low-income discount customers into such tiers; nor does PAWC currently have a mechanism in place to request that current low-income discount participants update their income information. Ms. Everette elaborated that neither PAWC nor the Dollar Energy Fund[[40]](#footnote-41) were able to verify the income data from all H2O Program participants. PAWC St. 4-R at 14‑15.

We find Ms. Everette’s testimony compelling; thus, we concur with the ALJ’s recommendation that PAWC not be required to implement a tiered- discount program at this time is reasonable. Therefore, we shall deny the OCA’s Exception No. 10 and the CAUSE-PA’s Exception No. 2 regarding this matter.[[41]](#footnote-42)

#### Low Income Customer Outreach, Data Collection and Reporting (OCA Exception No. 10)

##### i. Position of the Parties

PAWC witness, Ms. Dean, testified that PAWC utilizes a variety of tools, mechanisms and forums that include information targeted to customers with difficulty paying their monthly bill. Ms. Dean provided details about PAWC’s customer outreach which includes: (1) direct customer communication; (2) participation in consumer education events and local community events; (3) Dollar Energy Fund outreach; and (4) work with community-based organizations (CBOs). Ms. Dean noted that PAWC communicates directly with its customers through bill inserts, email and social media, adding that some of the messaging specifically targets low-income customers. Moreover, Ms. Dean provided that customers may call PAWC’s customer service center or visit the PAWC website for information regarding the H2O Program. Ms. Dean highlighted that in 2018, PAWC created a dedicated internal position that is responsible for customer outreach and communications relative to its low-income programs. PAWC St. 17-R at 3‑4, 8.

The OCA witness, Mr. Colton, recommended that the Commission direct PAWC to budget $50,000 to hire an expert consultant to develop, within twelve months of a final order in this proceeding, a “grass-roots, boots-on-the-ground” community outreach plan to identify and enroll eligible low-income customers for PAWC’s BDP. OCA St. 4 at 4, 58. Mr. Colton noted that the new outreach plan should reflect focused efforts on consumer education and outreach, specific to the demographics of its service territory, and should identify efforts to educate and enroll eligible and interested customers at or below 50% of the FPL. OCA St. 4 at 4, 58-59

##### ii. Recommended Decision

The ALJ found that: (1) PAWC already has extensive community and customer outreach through consumer education, community events, Dollar Energy Fund outreach, collaboration with CBOs, and direct customer communication by way of postal mail, email, social media and phone; (2) customers can obtain low-income program information from PAWC’s website or through the Commission; and (3) PAWC maintains a dedicated internal position responsible for customer outreach and communication. R.D. at 67-68, FOF Nos. 167-170 (citing PAWC 17-R at 3-4, 8).

After noting that PAWC accepted several of the CAUSE-PA’s recommendations relative to data collection, outreach and reporting, the ALJ addressed PAWC’s agreement to expand outreach to communities within its service territory. The expansion will include development of an outreach plan to target communities impacted by the COVID-19 Pandemic, working through a low-income advisory group to solicit input from interested parties and stakeholders to target areas with the most need, and an overall strategy and tactics to educate and enroll eligible and interested customers at or below 50% of the FPL. The ALJ noted that PAWC agreed to enhance its training materials and call scripts to address how customers that call PAWC and the Customer Service Center, indicating that they are having difficulty paying their bills or are requesting financial assistance, are directed to PAWC’s customer assistance programs. R.D. at 68-69, FOF No. 171 (citing CAUSE-PA St. 1 at 51-52), FOF No. 172 (citing Settlement at ¶ 37) and FOF No. 173 (citing Settlement at ¶ 41; CEO Stipulation at ¶ 7).

The ALJ acknowledged that within ninety days of a final order in this proceeding, PAWC agreed to establish a low-income advisory group that will include CBOs within PAWC’s service territory, a representative from BCS and other interested stakeholders and interested parties in this case, for the purpose of requesting input to strengthen the H2O Program. The ALJ also noted PAWC’s agreement to develop a process for program data collection and reporting to improve low-income customer counts, regardless of how such information is provided. The process will include: (1) tracking for new metrics, such as the reason a customer left the H2O Program; (2) consistent monthly data related to low-income arrearages by rate zone and low-income terminations by rate zone; and (3) the number of low-income customers for whom PAWC has confirmed are at or below 150% of the FPL. R.D. at 69, FOF No. 174 (citing Settlement at ¶ 43; CEO Stipulation at ¶ 9) and FOF No. 175 (citing CEO Stipulation at ¶ 10).

##### iii. OCA Exception No. 10 and Replies

The OCA challenges the ALJ’s finding that PAWC already has extensive outreach to its customers, arguing that Mr. Colton’s recommendation that PAWC hire an independent expert to develop an outreach plan to identify and enroll eligible low-income customers in the BDP, should not be denied. OCA Exc. at 29 (citing R.D. at 67-68, FOF No. 167). The OCA also challenges the ALJ’s findings that PAWC regularly communicates with customers and has agreed to expand community outreach to communities in need, enhance training materials and call scripts, and establish a low-income advisory group for the purpose of soliciting input. OCA Exc. at 29 (citing R.D. at 68, FOF Nos. 168-169, 172-173). The OCA claims that although PAWC’s efforts may be beneficial for its low-income customers, PAWC’s existing outreach has resulted in enrollment of only 16.7% of its 119,859 income-eligible customers. OCA Exc. at 29 (citing OCA St. 4 at 44-59). The OCA concludes that an independent review of what PAWC can do to increase the enrollment of its eligible customers is necessary and reasonable to ensure outreach to as many eligible customers as possible. OCA Exc. at 29-30.

In its Replies to the OCA’s Exception No. 10 regarding customer outreach, PAWC counters that the OCA does not have a valid basis to propose a requirement that PAWC budget $50,000 for an expert consultant. PAWC R. Exc. at 20-21 (citing OCA Exc. at 29; OCA St. 4 at 4, 68-69). PAWC asserts that it showed that it conducts extensive outreach and maintains a dedicated internal position responsible for such outreach and communications. PAWC R. Exc. at 21 (citing PAWC St. 17-R at 3-4, 8). Further, PAWC points out that it accepted several of CAUSE-PA’s recommendations regarding outreach, data collection and reporting, and establishing a low-income advisory group. PAWC R. Exc. at 21 (citing CAUSE-PA St. 1 at 51-52; Settlement at ¶¶ 37, 41, 43, 48; CEO Stipulation at ¶¶ 7, 9-10). Moreover, PAWC argues that the OCA did not provide evidence to support why an outside consultant is necessary. Accordingly, PAWC concludes that the ALJ’s determination that a consultant is not required is reasonable and supported by the record. *Id.*

##### iv Disposition

The OCA contends that it is necessary and reasonable for PAWC to hire an expert consultant because PAWC’s existing outreach to enroll income-eligible customers has resulted in an enrollment percentage that warrants an increase. OCA Exc. at 29-30. As the ALJ discussed in his Recommended Decision, PAWC agreed to several terms of the Settlement that relate to improvements to its low-income programs, including, *inter alia*: (1) expanding community outreach; (2) enhancing training materials and call scripts; and (3) the creation of a low-income advisory group that will solicit input to enhance PAWC’s H2O Program. Settlement at ¶¶ 37, 41, 43. Further, the advisory group will include: (1) CBOs within PAWC’s service territory; (2) a representative from BCS; and (3) other interested stakeholders and parties from this case. Settlement at ¶ 43. Moreover, as a part of its Joint Stipulation with CEO, PAWC agreed to develop a process for program data collection and reporting. CEO Stipulation at ¶ 10.

We are of the opinion that requiring PAWC to hire a consultant to improve its ratio of enrollment to income-eligible customers, in addition to the several actions that PAWC agreed to undertake to address and improve its customer outreach efforts, does not appear necessary or reasonable at this time. Therefore, we shall deny the OCA’s Exception No. 10 on this matter and adopt the ALJ’s recommendation that it is not necessary for the Company to hire an independent expert to develop an outreach plan to identify and enroll eligible low-income customers in the BDP.[[42]](#footnote-43)

#### Comprehensive Universal Service Program (USP) (CAUSE-PA Exception No. 3)

##### i. Position of the Parties

PAWC offered that its Commission-approved low-income programs, which is comprised of PAWC’s customer assistance portfolio, are clear, transparent, easily accessible and subject to review by the Commission. Further, PAWC noted that, the experience of electric and gas utilities has shown that USPs usually evolve over time and after extensive consideration by the Commission of different approaches and the evaluation of stakeholder collaboratives. PAWC R.B. at 64; PAWC M.B. at 63, *see also* PAWC St. 14-R at 33. Moreover, PAWC acknowledged its agreement to convene a low-income advisory group following the conclusion of the instant proceeding, adding that the more prudent resolution of this issue would be for PAWC and the stakeholders to further refine the low-income programs through the efforts of the low-income advisory group. PAWC R.B. at 64; PAWC M.B. at 63-64; *see also* Settlement at ¶ 43. In addition, PAWC noted that it agreed to request that the Commission initiate a proceeding to determine whether the “CAP Policy Statement” should be extended to regulated water and wastewater utilities. PAWC R.B. at 64; Settlement at ¶ 44.

The CAUSE-PA witness, Mr. Miller, recommended that PAWC develop and file, for review and approval by the Commission, a comprehensive USP within one year of the effective date of rates in this proceeding. Thereafter, PAWC should petition the Commission for approval of a revised USP every five years, coinciding with the requirements of regulated gas and electric utilities. Mr. Miller explained that although PAWC has provided policies and procedures related to its low-income programs, this is not the same as having a comprehensive USP that details the terms and conditions of each program, eligibility requirements and other key program goals and criteria. Mr. Miller further recommended that the USP should be drafted in consultation with interested stakeholders and parties to this proceeding and should memorialize the guidelines, benefits, and eligibility requirements of PAWC’s low-income programs, including the results of this proceeding. CAUSE-PA St. 1 at 48-49.

##### ii. Recommended Decision

In approving the Settlement, the ALJ did not require PAWC to develop a comprehensive, written USP Plan. R.D. at 128-129. The ALJ noted that Mr. Miller acknowledged that PAWC has policies and procedures related to its low-income programs and that the experience of the Commonwealth’s electric and gas utilities has shown that USPs typically evolve over time after extensive Commission consideration of different approaches and the evaluation of stakeholder collaboratives. R.D. at 70, FOF No. 177 (citing CAUSE-PA St. 1 at 48) and FOF No. 178 (citing PAWC St. 14-R at 33).

##### iii. CAUSE-PA Exception No. 3 and Replies

In its Exception No. 3, the CAUSE-PA asserts that the ALJ erred by not requiring PAWC to develop a comprehensive USP. CAUSE-PA Exc. at 13 (citing R.D. at 128-129). The CAUSE‑PA argues that PAWC does not currently have a written USP document explaining the rules, procedures and benefits provided through its universal service programs. CAUSE-PA Exc. at 13 (citing CAUSE-PA M.B. at 62; R.B. at 27-30). The CAUSE-PA reiterates its position that although PAWC has policies and procedures related to its low-income programming, the Company should be required to develop a comprehensive USP for review and approval by the Commission, so that the Commission, stakeholders and consumers would be able to assess the conditions, eligibility criteria and key goals and criteria. CAUSE-PA Exc. at 13 (citing CAUSE-PA M.B. at 62-64).

The CAUSE-PA cites to the testimony of its witness, Mr. Miller, who explained that a comprehensive USP would facilitate Commission oversight of rate-supported programs, ensuring that the programs are designed and administered fairly, as well as allowing for periodic review and improvements. CAUSE-PA Exc. at 13 (citing CAUSE-PA M.B. at 62). The CAUSE-PA notes that, although water utilities in Pennsylvania are not statutorily required to submit USPs to the Commission, the Commission is required to oversee rate-supported programs. CAUSE-PA Exc. at 13 (citing *Popowsky v. Pa. PUC*, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301). The CAUSE-PA adds that requiring PAWC to submit a USP, particularly as the COVID-19 Pandemic Emergency continues to spread and change communities and economies, would provide a “regular mechanism” for the Commission to review the adequacy of PAWC’s universal service programs. *Id.*

The CAUSE-PA emphasizes that the Recommended Decision should be amended to require that PAWC develop a comprehensive USP to ensure clarity, transparency, and periodic review and improvement of PAWC’s low-income programs. According to the CAUSE-PA, the USP should be developed in consultation with interested parties and stakeholders and include the guidelines, benefits and eligibility requirements of PAWC’s low-income programs, including the results of the instant case. The CAUSE-PA further contends that PAWC should be required to submit its USP to the Commission for review and approval within one year of the effective date of rates in this proceeding and, at least every five years thereafter, for revisions. CAUSE-PA Exc. at 13‑14 (citing CAUSE-PA M.B. at 63). Moreover, the CAUSE-PA maintains that a community outreach plan targeting the hardest-hit communities from the COVID-19 Pandemic should be included in its USP. CAUSE-PA Exc. at 14 (citing CAUSE-PA M.B. at 31). In concluding its argument on this matter, the CAUSE-PA avers that given PAWC’s agreement to establish a low-income advisory group, the outreach plan would allow the Company to provide its outreach measures in a clear and concise manner to the group members. *Id.*

In its Replies to the CAUSE-PA’s Exception No. 3, PAWC avers that the ALJ properly rejected the CAUSE-PA’s proposal that PAWC develop a USP. PAWC R. Exc. at 21 (citing CAUSE-PA Exc. at 13). PAWC points out that it has agreed to create a Low-Income Advisory Group; and, within three months of a final order, it will initiate a Commission proceeding to consider whether to extend the “CAP Policy Statement” to Commission-regulated water and wastewater utilities. PAWC R. Exc. at 21 (citing Settlement at ¶¶ 43-44). PAWC also notes that its witness, Mr. Cawley, testified that the experience of the Commonwealth’s electric and gas utilities has shown that USPs evolve over time, after extensive Commission consideration of different approaches and evaluation of the results of stakeholder collaboratives. PAWC R. Exc. at 21 (citing PAWC St. 14-R at 33). As such, PAWC believes that the ALJ correctly concluded that the proper forum for PAWC and the stakeholders to refine its low-income programs would be through the efforts of the Low-Income Advisory Group, and if necessary, the Commission can address a USP at a later time. PAWC R. Exc. at 21-22.

##### iv Disposition

In its Exceptions, the CAUSE-PA advances its argument that a comprehensive USP, developed in consultation with interested parties and stakeholders, would ensure Commission oversight and allow the Commission, stakeholders, and consumers the ability to assess the conditions, eligibility criteria and key goals and criteria. CAUSE-PA Exc. 3 at 13-14; CAUSE-PA St. 1 at 48-49. PAWC counters that it agreed to form a low-income advisory group, initiate a proceeding with the Commission regarding extension of the “CAP Policy Statement” to water and wastewater utilities and references Mr. Cawley’s testimony to assert that the proper forum for refinement of low-income programs is through the efforts of the low-income advisory group. PAWC R. Exc. at 21 (citing Settlement at ¶¶ 43-44).

As discussed earlier, the Low-Income Advisory Group will solicit input to improve PAWC’s low-income programs. Further, the Low-Income Advisory Group will include: (1) CBOs; (2) representatives from the BCS; (3) interested stakeholders; and (4) interested parties in this case. R.D. at 69 (citing Settlement at ¶ 43; CEO Stipulation at ¶ 9). Moreover, Mr. Cawley testified that, given the historical evolution of low-income assistance programs and USPs among Pennsylvania utilities considered by the Commission, he believes that “the approach to enhance low-income assistance for customers of water and wastewater utilities would benefit from consideration of multiple stakeholders, and a Commission collaborative.” PAWC St. 14-R at 33.

We agree with the position of the ALJ and the Company that to require the Company to develop a comprehensive USP, in consideration of PAWC’s agreement to develop a low-income advisory group or board, would be a superfluous measure at this time. The objectives and purpose of the Low-Income Advisory Group or Board would offer a more efficient and prudent path forward than a comprehensive USP document. Therefore, we shall deny the CAUSE-PA’s Exception No. 3 and adopt the ALJ’s recommendation on this matter.

### 8. Service Quality and Customer Service Issues

#### Customer Performance Standards (OCA Exception No. 11)

##### i. Position of the Parties

The OCA argued that PAWC should establish minimum performance standards for several aspects of customer service, including its call center operations, leak repairs and main breaks, recorded field appointments and its response to customer complaints. The OCA set forth a detailed proposal of specific customer service metrics against which PAWC’s performance should be measured. OCA St. 5 at 30; OCA St. 5SR at 6. The OCA maintained that the establishment and monitoring of objective standards constitute a means to ensure that PAWC maintains and, where necessary, improves its level of performance relative to other major Pennsylvania utilities. OCA St. 5 at 7-14, 18-19, 30; OCA St. 5SR at 6, 8-9, 12, 14-15, OCA M.B. at 94.

The OCA argued that the Commission should exercise its authority under the Code to condition PAWC’s rate increase upon the performance standards proposed by the OCA. *Id*. Citing, *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. P.U.C. 409, 415-16, 74 PUR 4th 238, 244-45 (1986) *(PG&W)* (Commission conditioned PG&W interim rate increase on demonstrated customer service improvements). Therefore, the OCA, therefore asserted PAWC must justify its existing and proposed rates, in part, based on its ability to perform its essential quality of service and customer service functions at a reasonable performance level. Citing, *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00005654, Order at 33-34 (Nov. 22, 2000).

PAWC rejected the OCA’s proposed customer performance metrics as arbitrary performance standards, none of which are required by law or Commission rule. On that basis, PAWC asserted that the Commission should reject the OCA’s position that PAWC’s rate increase should be conditioned on the imposition of arbitrary customer performance standards. PAWC R.B. at 65-66

PAWC further asserted that the Company provides adequate, efficient, safe, and reasonable service in accordance with 66 Pa. C.S. § 1501. The Company noted that the *PG&W* case cited by the OCA is distinguishable on its facts. In *PG&W*, the company was experiencing a multitude of serious service issues. There, the Commission determined that the company had failed to maintain adequate water quality and *failed to provide adequate, efficient, safe, and reasonable service* in accordance with its statutory duty. PAWC contended that, in the present case, the circumstances are the opposite. PAWC asserted that there has been no showing that PAWC failed to provide reasonable and adequate service. To the contrary, PAWC maintained that its service provision is exemplary, thus, the imposition of performance standards is not warranted here.

PAWC submitted that there is no evidence that there would be any degradation in PAWC service if the Commission failed to impose the OCA’s recommended performance standards, including those relating to response time to leaks and main breaks, keeping customer appointments, keeping field appointments, and resolving customer inquiries. PAWC concluded by noting that the OCA failed to explain why, given the Company’s exemplary performance, the Commission should impose arbitrary standards upon the Company. PAWC R.B. at 65-66.

##### ii. Recommended Decision

While the ALJ made findings of fact regarding the OCA’s and PAWC’s evidence of PAWC’s current service performance, the ALJ did not recommend that the Commission require PAWC to establish new or formal customer performance service standards. R.D. at 71.

##### iii. OCA Exception No. 11 and Replies

In its Exception No. 11, the OCA argues that the ALJ erred in not recommending that PAWC be required to establish any provisions related to customer performance standards. The OCA noted that the ALJ did not address the OCA’s proposed performance metrics except to adopt findings of fact reflecting the OCA’s position. R.D. at 71. The OCA claims that the ALJ erred by not affirmatively requiring PAWC to adopt standards for its customer service performance.

The OCA reiterates its position that the evidence submitted by the OCA witness regarding PAWC’s customer performance measured against the appropriate performance metrics demonstrates the need for the Commission to exercise its discretion to condition any rate increase upon the imposition of the performance metrics and reporting proposed by the OCA. OCA Exc. at 30-32.

In its Replies, PAWC asserts that the OCA’s rationale for imposing performance standards simply lacks merit. PAWC points out that, while on the one hand, the OCA claims that the Company is providing deficient service and underperforming, on the other hand it claims that 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. PAWC observes that there is no evidence on the record that, if the Commission declines to impose the OCA’s recommended performance standards, there would be any degradation in the Company’s service. For these reasons, PAWC requests that the OCA’s recommendations be rejected. PAWC R. Exc. at 23.

##### iv. Disposition

Upon consideration of the record, and the arguments of the Parties, we find that there is no basis to condition PAWC’s rate increase upon the imposition of the customer performance service standards proposed by the OCA. Importantly, we conclude the present rate case is not akin to the *PG&W* case cited by the OCA. In that case, the Company’s service deficiencies were demonstrated to be so serious as to constitute the failure to provide safe and adequate service. To the contrary, in the present case there is no such finding. Here, many of the OCA’s recommendations are for PAWC to continue its service experience at *existing levels* which demonstrates that PAWC is, as a general matter, not failing to provide safe, adequate and reasonably continuous service in conformance with the Code. Accordingly, we reject the OCA’s request regarding the imposition of customer performance service standards.

#### Out-of-State Call Center Audits and Reporting (OCA Exception No. 12)

##### i. Position of the Parties

The OCA argued that PAWC’s out-of-state call centers should be audited to ensure that the needs of the Commonwealth of Pennsylvania’s customers are adequately served. The OCA’s witness raised a concern whether these representatives are adequately trained and supervised to provide the Pennsylvania-specific rights and remedies to customers when discussing how to respond to a termination notice. OCA St. 5SR at 16. The OCA asserted that because PAWC maintains four call centers, responsible for supervising over 200 customer service representatives, which serve sixteen different states and handle calls for thousands of customers daily, it is reasonable to question whether PAWC’s call centers adequately service PAWC’s Pennsylvania customers. *Id.*

In support of its position, the OCA noted BCS’ findings of verified complaints and those with infractions. *Id*.; OCA St. 5 at 13. On this basis, the OCA recommended that PAWC be required to conduct regular audits of the third-party call centers to ensure that the rights and remedies available to Pennsylvania residential customers pursuant to Chapter 56 are affirmatively offered and presented when PAWC contacts such customers who have received a termination notice. Further, the OCA requested that the results of such audits should be reported to BCS as part of the quarterly customer complaint analysis that the OCA was also recommending in this case. OCA M.B. at 98.

PAWC argued that the OCA’s proposal for call center audit and reporting was unfounded. PAWC noted its witness testified that PAWC’s third-party call centers must comply with all Pennsylvania requirements; its CSRs receive the same Pennsylvania-specific training as the CSRs located in the CSC’s -operated call centers; and the performance levels of the third-party call centers are already monitored daily – far more intense monitoring than the periodic auditing the OCA witness proposed. PAWC M.B. at 66-67 citing PAWC St. 18-R at 11-15, Tr. at 805-806.

PAWC further refuted the OCA’s position citing key differences between PAWC’s operations and performance metrics as compared to those of the electric and gas utilities. PAWC explained that severe winter weather can trigger high call volumes, but PAWC noted that the use of four call centers is meant to mitigate such monthly swings in call volumes to the maximum extent possible, while still maintaining affordable service. PAWC asserted that the call centers are appropriately staffed to balance customer needs and costs. Furthermore, PAWC submitted that, while performance may be impacted by severe winter weather events as call volumes greatly increase, the use of four call centers and an interactive voice recognition (IVR) system, through which customers can request a call-back, mitigate such impacts, and allows the Company to manage its call center efficiently. PAWC R.B. at 66-67 citing PAWC St. 18-R at 4-11, 13-16, Tr. at 800-805.

##### ii. Recommended Decision

The ALJ concluded that the OCA’s proposal for audits and reporting regarding the PAWC’s call centers performance was not warranted. The ALJ expressly found that the CSC’s third-party operated call centers are required to comply with all Pennsylvania requirements, its CSRs receive Pennsylvania-specific training, and that PAWC monitors the performance levels of the third-party call centers daily. R.D. at 72, FOF 192, citing OCA St. 5SR at 11-15; Tr. at 805-806. Based upon these Findings of Fact, supported by the PAWC’s and the OCA’s own witness’ testimony, the ALJ did not require PAWC to audit its call centers as condition of the approval of the Settlement.

##### iii. OCA Exception No. 12 and Replies

In its Exception No. 12, the OCA asserts that the adoption of the Settlement should be conditioned upon the imposition of audit and reporting associated with PAWC’s out-of-state call centers. OCA Exc. at 32-33. The OCA reiterates its concerns, as reflected in the testimony presented by the OCA witness, that PAWC’s call centers may not adequately address Pennsylvania-specific needs of customers. The OCA also claims that more is needed in the evaluation of Pennsylvania-specific issues than the monitoring that PAWC currently conducts. For these reasons, the OCA requests that the Commission adopt the OCA’s recommendation for audits and reporting associated with PAWC’s call centers. OCA Exc. at 32-33.

PAWC replies that the OCA provides scant support for its recommendation that the Commission require PAWC to perform regular audits of its out-of-state call centers. PAWC contends that the 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 daily. PAWC R. Exc. at 23‑24.

##### iv. Disposition

We find that the OCA’s Exception lacks merit. We agree with the ALJ’s determination that the training of PAWC’s out-of-state call center employees is the key to compliance with Pennsylvania customer service obligations and that it is clear from the record that this training is in fact in place. On balance, and in the context of a settlement, adding any audit requirements where there is no demonstrated service quality erosion is not merited. For these reasons, the OCA’s proposal to impose additional audit and reporting requirements is rejected.

#### c. Customer Satisfaction Surveys (OCA Exception No. 13)

##### Position of the Parties

The OCA argued that PAWC’s current surveys measuring customer satisfaction with its performance are insufficient and fail to obtain detailed information concerning the customer’s review of the actual recent transaction. OCA St. 5 at 18. To address this concern, the OCA’s witness Barbara R. Alexander noted that BCS has approved survey instruments for major Pennsylvania electric and gas utilities, which obtain information from customers about their experience in reaching the utility, using the automated phone system and interacting with the customer representative, in addition to their overall satisfaction. OCA St. 5 at 18. The OCA thus recommended that PAWC develop routine customer satisfaction surveys consistent with those approved by the BCS for other major utilities. *Id.*; OCA St. 5SR at 9-10.

PAWC argued that the form Ms. Alexander sought to impose on the Company is the result of laws and related rulemakings that are completely inapplicable to water and wastewater utilities, namely the “Electricity Generation Customer Choice and Competition Act of 1996” and the “Natural Gas and Competition Act of 1999.” PAWC M.B. at 68. PAWC observed that Ms. Alexander acknowledged that the Company already conducts routine customer satisfaction surveys of customers and measures customer satisfaction. *Id.*, citing OCA St. 5 at 18. PAWC contended that the OCA had not provided any basis for the assertion that the Company should be required to conform its processes and procedures to those of natural gas and electric utilities. PAWC M.B. at 68. PAWC argued that the Company’s existing surveys provide a clear measurement of customer satisfaction and the Company should be permitted to utilize such surveys going forward. *Id.*

##### ii. Recommended Decision

The ALJ made several Findings of Fact in his Recommended Decision on this issue. R.D. at 73. The ALJ found that the OCA’s witness Alexander recommended that the Company develop a program of routine customer satisfaction surveys that conform to the methodology utilized by Pennsylvania’s electric and gas utilities. FOF 193, citing OCA St. 5 at 28. The ALJ also found specifically that Ms. Alexander acknowledges that the Company already conducts routine customer satisfaction surveys of customers and measures customer satisfaction. R.D. at 73, FOF 194, citing OCA St. 5 at 18. The ALJ did not recommend that the OCA’s proposal be adopted by the Commission.

##### iii. OCA Exception No. 13 and Replies

In its Exception No. 13, the OCA avers that the ALJ erred by failing to include a requirement that PAWC conform its customer satisfaction surveys to the form used by electric and natural gas utilities. OCA Exc. at 33-34. The OCA notes that the Joint Petition does not contain any provision related to customer satisfaction surveys and that the ALJ did not expressly adopt or discuss the OCA’s recommendation that PAWC should develop a program of routine customer satisfaction surveys consistent with those approved by the BCS for major Pennsylvania electric and gas utilities. OCA Exc. at 33‑34, OCA St. 5 at 18; OCA St. 5SR at 9-10.

The OCA asserts that PAWC customer satisfaction survey questions are insufficient because they do not obtain more detailed information concerning the customer’s review of the actual recent transaction. OCA Exc. at 34, OCA St. 5 at 18. The BCS-approved survey used by major Pennsylvania electric and gas utilities obtains information from customers about their experience in: (1) reaching the utility; (2) using the automated phone system; and (3) interacting with the customer representative, in addition to their overall satisfaction. OCA St. 5 at 18. Although the surveys originated from statutes and rulemakings related to electric and gas utilities, the questions asked in the surveys are not industry-specific and are equally applicable to PAWC and the measurement of its customers’ satisfaction. OCA St. 5SR at 9. For these reasons, the OCA argues that the Commission should adopt the OCA’s recommendation. OCA Exc. at 33-34.

PAWC replies that 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. PAWC R. Exc. at 22-23.

##### iv. Disposition

We conclude that the OCA’s Exception No. 13 lacks merit. We agree with the ALJ’s Findings of Fact and determination to refrain from imposing upon PAWC, more detailed customer satisfaction survey requirements. PAWC currently gathers customer satisfaction information and its methods are sufficient under the current statutory and regulatory framework applicable to water and wastewater utilities. For each of these reasons, the OCA’s proposal to impose customer satisfaction survey requirements is denied.

#### d. Training on Termination of Service (OCA Exception No. 14)

##### i. Position of the Parties

The OCA raised a concern that PAWC’s field personnel may encounter situations where additional training on termination of service should be required. The OCA cited the example of encountering children at the door or evidence of lack of understanding due to language or capacity, suggesting that there would be a threat to health and safety if the termination were implemented at that time. OCA St. 5SR at 10‑11. The OCA pointed out that PAWC’s training documents do not expressly include these and other situations where it may be appropriate to halt the termination process, even if not mandated by regulation. OCA M.B. at 102-03, citing OCA St. 5 at 18 and OCA St. 5R at 10-11.

In response to the OCA’s request, PAWC agreed to review and revise its training documents to include additional scenarios and written instructions for: (1) an allegation of a pending dispute or complaint; and (2) an allegation of a PFA Order or a court order that shows evidence of domestic violence. PAWC M.B. at 68. However, PAWC disagreed with the OCA’s recommendation that PAWC train field representatives to detect conditions that would result in danger or harm to those at the residence at the time of termination of essential water service, which in some cases, is relied upon for home heating. PAWC took the position that additional training is not required, and Ms. Alexander’s recommendation should be rejected because the Company already complies with winter shutoff requirements and Ms. Alexander’s recommendation is baseless as it pertains to home heating. PAWC M.B. at 68-69.

The Company also explained that, if a field representative encounters circumstances not specifically identified in the law or Commission Regulations, they are instructed to contact their supervisor and/or business performance team members before terminating service. Importantly, Ms. Alexander stated that she agreed with this overall approach. PAWC M.B. at 69. PAWC submitted that it would be impracticable and unreasonable to require the Company to train its field representatives to detect any condition that could result in danger or harm from termination. *Id.*

##### ii. Recommended Decision

The ALJ made five Findings of Fact on this issue and ultimately concluded that the OCA’s recommendation did not have merit. R.D. at 74. He found that the OCA’s witness Alexander had recommended that the Company expand its materials related to termination of service. FOF 198, citing OCA St. 5 at 17-18. The ALJ also found that the Company agreed to review and revise its training documents to include additional scenarios and written instructions for: (1) an allegation of a pending dispute or complaint and (2) an allegation of a PFA Order or a court order that shows evidence of domestic violence. FOF 199, citing PAWC St. 17-R at 14.

Further, the ALJ found that Ms. Alexander also recommended that the Company train its field representatives to detect conditions that would result in danger or harm to those at the residence at the time of termination of essential water service, which in some cases, is relied upon for heating. FOF 200, citing OCA St. 5 at 18. The ALJ also found that the Company had explained that if a field representative encounters circumstances not specifically identified in the law or Commission Regulations, they are instructed to contact their supervisor and/or business performance team members before terminating service and Ms. Alexander stated that she agreed with this overall approach. R.D. at 74, FOF 201, citing PAWC Response to OCA-XX-III-4; OCA St. 5 at 11. Finally, the ALJ found that the training document revisions agreed to by the Company are reasonable and it would be unreasonable to require the Company to train its field representatives to detect conditions that would result in danger or harm to those at the residence at the time of termination of essential water service. R.D. at 74, FOF 202. On this basis, the ALJ did not recommend adoption of the OCA’s further requested training.

##### OCA Exception No. 14 and Replies

In its Exception No. 14, the OCA takes issue with Finding of Fact No. 202 and the ALJ’s concomitant rejection of the OCA’s termination training recommendation. OCA Exc. at 34-35. The OCA notes that PAWC has acknowledged, however, that when field representatives “encounter circumstances not specifically identified in the law or PUC regulation, they are instructed to contact their supervisor and/or business performance team members before terminating service.” *See*, PAWC M.B. at 68-69. The OCA concedes that, as clarified in its Reply Brief, the OCA agrees with this overall approach. However, the OCA continues to recommend that PAWC modify its training materials to explicitly empower the employee to use their discretion to withdraw and seek guidance from management before terminating service, when they do observe an unusual condition that could result in danger or harm from termination. OCA Exc. at 34, citing OCA St. 5SR at 11. This, according to the OCA, would make the written materials consistent with PAWC’s description of its instructions to field personnel and is, therefore, reasonable. OCA Exc. at 34-35.

In its Replies, PAWC asserts that the OCA’s recommendation that PAWC modify its training materials seeks to remedy a problem that does not exist. This is exemplified by the fact that the OCA agrees with the Company’s current field termination practices.  *See* PAWC Response to OCA-XX-III-4; OCA St. 5 at11. PAWC R. Exc. at 22-23. PAWC is concerned that 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. *Id.* PAWC argues that the ALJ properly rejected the OCA’s recommendations and correctly determined that PAWC’s training materials are reasonable and supported by the record. PAWC R. Exc. at 23.

##### iv. Disposition

The ALJ made detailed Findings of Facts on this important issue. We do not dismiss lightly the concerns expressed by the OCA’s Exception No. 14, regarding what are sometimes difficult service termination situations. However, we agree with the ALJ that additional training of PAWC’s field personnel regarding detection of any condition that could pose a risk of harm from termination is impracticable and unreasonable. Moreover, we find sufficient PAWC’s explicit directive currently supplied to its field personnel advising them to seek appropriate supervisory guidance in unusual termination circumstances. In so ruling, we encourage PAWC to continue its efforts to avoid service termination circumstances potentially impacting the well-being of its customers. The OCA’s recommendation is, however, too broad-based and somewhat duplicative of PAWC’s current process. Therefore, the OCA’s Exception No. 14 is denied.

#### e. Service at High Pressure (OCA Exception No. 15)

##### Position of the Parties

The OCA recommended that, to protect customer service lines and inside plumbing in situations where PAWC elects to provide higher than 125 psi static pressure, the Company should either (1) provide a pressure reducer protecting the customer’s service line; or (2) provide an insurance policy covering repair or replacement of the service line. OCA M.B. at 103, OCA St. 6 at 6; OCA St. 6SR at 10‑11. OCA cited its testimony where Mr. Terry L. Fought explained: “[I]f this approach was implemented, the cost of protecting service lines with pressures over 125 psi would be taken into account in deciding the most economical way to provide service to higher ground elevations.” *Id.*, OCA St. 6SR at 11.

PAWC argued that the OCA’s recommendation should be rejected because PAWC is permitted, pursuant to 52 Pa. Code §65.6, to “undertake to furnish a service which does not comply with [normal operating pressures between 25 psi and 125 psi] where compliance with such specifications would prevent it from furnishing service to any other customer or where called for by good engineering practices.” PAWC M.B. at 69. PAWC noted that it only provides service in excess of 125 psi within the strict parameters of the Code and that the Company’s distribution system traverses challenging terrain and elevation changes. PAWC M.B. at 69. PAWC claimed that there are circumstances, such as providing service to high elevation areas, that sometimes demand providing service in excess of 125 psi and, in such cases, the Company’s PUC-approved tariff states that *the customer* is required to install and maintain a pressure regulator on its service line, not the Company. *Id.*, citing PAWC St. 3-R at 11-12 (emphasis in original).

The OCA responded that Mr. Fought stated that the customer is required to install a pressure regulator, which in many instances, is installed inside the building and protects the meter and the interior plumbing from high pressures, but this does not protect the customer’s service line between the curb box and the building from higher pressures. *Id.* Therefore, the OCA continued to recommend that PAWC install pressure regulators if pressures exceed 125 psi or provide an insurance policy covering repair or replacement of the service line. *Id.*

The PAWC replied and maintained its opposition to the OCA’s recommendation, noting the Company witness Aiton explained that the OCA is attempting to solve a problem that does not exist. PAWC R.B. at 69. PAWC explained that the operating pressure for new copper service lines installed by the Company is over 400 psi with a bursting pressure rating of over 1000 psi, so service lines with pressures over 125 psi are not often at risk. *Id.*, citing Tr. at 639.

##### Recommended Decision

The ALJ noted the OCA recommended that, if the Company elects to provide service at static pressure in excess of 125 psi to serve some customers, in order that it may serve other customers, the Company should be required to either provide a pressure reducer protecting the customer’s service line or an insurance policy covering the repair and replacement of the customer’s service line. R.D. at 75, FOF 203, citing OCA St. 6 at 6. However, the ALJ expressly found that PAWC is permitted to undertake to furnish a service which does not comply with [normal operating pressures between 25 and 125 psi] where compliance with such specifications would prevent it from furnishing service to any other customer or where called for by good engineering practices. R.D. at 75, FOF 204, citing 52 Pa. Code § 65.6. The ALJ also agreed with PAWC’s position that the Company’s distribution system traverses challenging terrain and elevation changes. FOF 205, citing PAWC St. 3-R at 12. R.D. at 75.

In addition, the ALJ also found that there are circumstances, such as providing water service to high elevation areas, that sometimes demand providing service more than 125 psi. *Id.*, FOF 206. Finally, the ALJ found that, in such cases, the Company’s Commission-approved tariff states that the customer is required to provide the installation and maintenance of a pressure regulator on their service line. R.D. at 75, FOF 207, citing PAWC St. 3-R at 11. Based on these findings, the ALJ did not recommend that the OCA’s position be adopted.

##### OCA Exception No. 15 and Replies

In its Exception No. 15, the OCA argues that the ALJ erred in not adopting the OCA’s recommendation that if the Company provides pressures higher than 125 psi, it should either provide a pressure reducer or an insurance policy covering the repair or replacement of the customer’s service line. OCA Exc. at 35. The OCA contends that the ALJ appears to accept PAWC’s argument that service lines are adequately protected by the tariff requirement that customers install a pressure regulator on the inlet side of the meter when the static pressure is more than 100 psi. *Id.*, R.D. at 75, FOF 207. The OCA contends that its witness explained, however, that in many instances the pressure regulator is installed inside the building and protects the meter and the interior plumbing from high pressures, but this does not protect the customer’s service line between the curb box and the building from higher pressures. OCA Exc. at 35, citing OCA St. 6SR at 11. The OCA contends that the Commission should adopt its recommendation that PAWC be required to provide a pressure regulator that covers the service line or an insurance policy to compensate the customer in the event of service line damage from high pressure. *Id.*

PAWC asserts in reply that it only provides service greater than 125 psi in limited circumstances and, even then, always within the strict parameters of the Code.[[43]](#footnote-44) PAWC R. Exc. at 24 and PAWC M.B. at 69. PAWC notes that, if service in excess of 125 psi is required, the Company’s tariff requires the customer to install and maintain a pressure regulator. Moreover, PAWC explains that newer copper service lines are capable of withstanding pressures well in excess of 125 psi without causing any issues for customer service. PAWC R. Exc. at 24, citing Tr. at 639.

##### iv. Disposition

We agree with the ALJ’s noted Findings of Fact, which are well-supported by the record in this case. Those findings, as well as the Commission’s Regulation governing departure from normal operating pressures support the Recommended Decision’s preservation of PAWC’s ability to serve customers in challenging terrain and the customer’s obligation to install appropriate pressure reducing equipment to protect their service line. In addition, we determine that it is not reasonable to impose the requirement of insuring the customer service line upon the distribution utility. Therefore, the OCA’s Exception No. 15 is denied.

#### f. Main Extensions (OCA Exception No. 16)

##### Position of the Parties

The OCA argued that PAWC should pursue two main extensions under PAWC’s Tariff Rule 27.1(F). The OCA’s witness Fought recommended two projects for main extensions that meet the criteria set forth in Tariff Rule 27.1(F). OCA St. 6 at 7-8; OCA St. 6-SR at 16-17. In each project, designated as Area 1 and Area 2, the impacted consumers must have water hauled in to serve their needs and otherwise lack access to potable water. Pursuant to the provisions of PAWC’s Tariff Rule 27.1(F), the OCA alleged that the potential consumers have significant health and/or safety impacts due to the lack of available potable water. OCA M.B. at 104-106. The OCA conceded that one of the involved residences is outside of PAWC’s certificated territory but, claimed that the Company nevertheless should be required to extend service to the involved area. OCA M.B. at 106-07. The OCA submitted that the consumers in Area 2 meet the requirements of Tariff Rule 27.1 (F). The OCA also opined that there may potentially be twenty other customers located in the area and that the potential consumers have identified health and safety impacts from the lack of potable water. OCA M.B. at 107‑08. Moreover, due to on-going litigation, there may be a potential for financial compensation from the third-party drilling companies for a main extension to this area. The OCA submitted that a main extension for these customers should be considered under Tariff Rule 27.1(F). *Id.*

In response, PAWC took the position that it should not be required to undertake the main extension. PAWC first noted that the projects would serve only one or two customers, requiring the Company to spend many times more than the amount the Company is required to expend pursuant to Tariff Rule 27.1. PAWC M.B. at 69. Second, PAWC argued that the proposed main extensions may result in water quality issues due to the long water age in a main that would serve only one or two customers. Third, PAWC submitted that 9812 Steubenville Pike is not even located within the Company’s certificated service territory and thus, Tariff Rule 27.1 would not even apply to that area. PAWC M.B. at 69-70.

The OCA claimed in reply that PAWC misunderstands the OCA’s proposal and does not appear to have evaluated whether there may be other potential customers for either Area 1 or Area 2. The OCA also asserted that it did not propose that the Area 1 main extension be limited to one customer, but instead, the one customer may be the last of the customers in the area that need a main extension. OCA R.B. at 34. The OCA also argued that PAWC had only estimated the costs of connecting one customer for Area 1 and two customers for Area 2 and had not evaluated whether other potential customer connections would be possible. OCA R.B. at 35. In addition, the OCA argued that the standard for evaluating the proposed main extensions in this case is Tariff Rule 27.1(F) which does not look at costs in the light of a Contribution in Aid of Construction (CIAC).

The OCA argued that Tariff Rule 27.1(F) is the exception to the rule set forth in Tariff Rule 27.1 which PAWC relies upon and specifically does not include any requirement for a CIAC for health and/or safety main extensions. In addition, Tariff Rule 27.1(F) also does not apply a cap to the costs of the main extensions, because the purpose of Tariff Rule 27.1(F) is to address situations where there is a significant health and/or safety need for service that might otherwise be cost-prohibitive. OCA R. B. at 35. The OCA submitted that applying the same cap as set forth in Tariff Rule 27.1 would completely eliminate the need for the exception created by Tariff Rule 27.1(F).

In addition, the OCA submitted that the fact that Steubenville Pike is currently outside of the Company’s service territory should not be considered an impediment because PAWC could file an application with the Commission to serve that area and be presumed fit to serve under the applicable legal standard. OCA R.B. at 35‑36, citing OCA St. 6SR at 15.

PAWC replied that the Company should not be directed to construct main extensions to serve individuals not located within the Company’s service territory, and for those within the Company’s service territory, the OCA failed to demonstrate how the anticipated costs to serve such a limited number of customers are reasonable pursuant to Tariff Rule 27.1. PAWC R.B. at 69. PAWC submitted that the OCA’s statements that there *may* be additional customers or that additional sources of funding couldbe available to the Company (*i.e*., PENNVEST [Pennsylvania Infrastructure Investment Authority] or other third-party funding sources) are not a reasonable basis to direct the Company to construct the requested main extensions. *Id.* PAWC noted that, if circumstances change in the future, the Company will re-evaluate the OCA’s request in light of any new facts and its Tariff.

##### Recommended Decision

The ALJ made six Findings of Fact on this issue, first noting that the OCA recommended that the Company consider funding main extensions for two areas in Washington County pursuant to Rule 27.1(F) of the Company’s Tariff. Area 1 is comprised of 51 Ullom Road, Washington, Pennsylvania and Area 2 is comprised of 216 Campbell Road and 99812 Steubenville Pike, Bulger, Pennsylvania. R.D. at 76, FOF 208, citing OCA St. 6 at 6-8.

The ALJ also found that the proposed main extensions would be: 1,500 feet, 1,600 feet, and 1,100 feet in length, respectively. The proposed extensions would serve 1 potential customer, 1 potential customer and 2 potential customers, respectively. The proposed main extensions would cost $225,000, $205,000 and $235,000, respectively. R.D. at 76, FOF 209, citing PAWC St. 3-R at 13. The ALJ found that 9812 Old Steubenville Road is outside of the Company’s service territory. R.D. at 76, FOF 210, citing PAWC St. 3-R at 13.

The ALJ also found that the proposed length of the main extensions and the fact that they would only serve one or two customers could present water quality degradation issues. *Id.*,FOF 211, citing PAWC St. 3-R at 14. The ALJ further found that the requested Company investment per residency is much higher than the Company is required to invest under Tariff Rule 27.1. *Id.*, FOF 212.

The ALJ found that: (1) the Company has agreed to provide the Office of Attorney General with engineering reports and cost estimates to run water line extensions to all impacted residents who might want to disconnect from their polluted wells and connect to PAWC’s system; (2) the Company has sent letters to National Fuel Gas Supply Corporation and Southeast Directional Drilling explaining that neither the residents at Area 1 and Area 2, PAWC, its shareholders, nor ratepayers should be responsible for funding the cost of a water line extension for residents with polluted groundwater; and (3) the party (or parties) responsible for the groundwater contamination should fund the full cost of the water line extensions necessary to supply the residents with clean water. R.D. at 76-77, FOF 213, citing PAWC St. 3-R at 14.

Based upon the record before him and these findings, the ALJ did not recommend the adoption of the OCA’s proposal that PAWC be required to undertake main extensions to Areas 1 and 2 pursuant to Tariff Rule 27.1(F).

##### OCA Exception No. 16 and Replies

The OCA notes that the Settlement does not address the OCA’s proposed main extensions and the OCA points out that the ALJ did not address the OCA’s recommended main extensions except to adopt certain findings of fact. OCA Exc. at 36, R.D. at 76, FOFs 208-213. The OCA submits that those findings suggest that the ALJ accepted PAWC’s claim that it should not be required to make the extensions because the Company investment per residency is higher than the Company is required to invest under Tariff Rule 27.1. The OCA claims that the ALJ erred by not recognizing that the residents seeking water service have alleged health and/or safety concerns that meet the criteria in Tariff Rule 27.1(F). OCA Exc. at 36-38. The OCA argues that Tariff Rule 27.1(F) is an exception to the general rule requiring the customer to contribute toward the costs for main extensions where there is a substantial public need, and the public health and safety may be compromised without access to a public water supply.The OCA asserts that PAWC did not provide any evidence to refute the evidence showing these requirements are met for the two main extensions at issue. OCA Exc. at 36-38.

In addition, the OCA claims that the ALJ’s Findings of Fact do not accurately characterize the OCA’s recommendations in this case. More specifically, the OCA alleges that Findings of Fact 209 and 211 incorrectly state that the proposed main extensions in Areas 1 and 2 would only serve four customers and potential service degradation would result. R.D. at 76. The OCA reiterates that it had recommended that PAWC pursue additional potential customer connections in Areas 1 and 2 beyond those specifically identified in the OCA witness Fought’s testimony and the public input testimony of Area 1 customer, Robert Teagarden. OCA R.B. at 34. Further, the Area 1 customer may be the last in a series of prior Tariff Rule 27.1(F) main extensions. *See*, OCA R.B. at 34. The OCA also identified that for Area 2, there may be a total of approximately twenty customers. *Id.*

The OCA also assigns error to Finding of Fact No. 212 in that it states that the proposed main extensions will require PAWC to spend more than the amount PAWC is required to expend pursuant to Tariff Rule 27.1. R.D. at 76. The OCA alleges that the ALJ failed to consider that PAWC’s cost calculation was flawed due to PAWC’s error in the number of potential customer connections and did not include any potential third-party funding sources for Area 2 customers or the possible cost offsets from low-interest PENNVEST loans. OCA Exc. at 36-38 and OCA R.B. at 34-35. The OCA also claims that Finding of Fact No. 212 applies the incorrect standard because Tariff Rule 27.1(F) does not look at costs in the light of a customer CIAC. The OCA continues by noting that Tariff Rule 27.1(F) also does not apply a cap to the Company investment required for the main extensions because the purpose is to address situations where there is a significant health and/or safety need for service that might otherwise be cost-prohibitive. The OCA claims that applying the same cap as set forth in Tariff Rule 27.1 would eliminate the need for the exception created by Tariff Rule 27.1(F). OCA Exc. at 36-38; OCA R.B. at 34-35.

The OCA also takes issue with Finding of Fact No. 210, which states that Steubenville Pike is not within the PAWC’s certificated service territory. R.D. at 76. According to the OCA, the fact that Steubenville Pike is currently outside of the Company’s service territory should not be considered an impediment. OCA Exc. at 36‑38; OCA R.B. at 35. The OCA posits that the area is adjacent to PAWC’s service territory and near another customer who received a main extension because of PAWC’s 2017 base rate proceeding. OCA Exc. at 36-38. For all these reasons, the OCA requests that the Commission adopt the OCA’s recommendation to pursue the two proposed main extensions under Tariff Rule 27.1(F). OCA Exc. at 36-38, OCA M.B. at 103-08 and OCA R.B. at 33-36.

In its Replies, PAWC submits that the OCA’s exception regarding main extensions should be denied because the OCA did not establish that the facts support an exception provided under Tariff Rule 27.1(F). PAWC R. Exc. at 23-24. PAWC takes issue with the OCA’s statement that PAWC did not provide any evidence to refute the facts supporting the OCA’s recommendation. PAWC submits that the OCA simply failed to prove that the proposed main extensions are warranted. PAWC asserts that the ALJ reasonably determined that the OCA had not established the facts necessary to support a Tariff Rule 27.1(F) exception. PAWC points out that, even in its Exceptions, the OCA only refers to “potential” additional customers in an attempt to apply Tariff Rule 27.1(F).[[44]](#footnote-45) Finally, PAWC contends that it should not be directed to construct a main extension to areas outside of its service territory, which is the case for one of the proposed extensions. PAWC R. Exc. at 24-25.

##### iv. Disposition

We begin by noting that this issue involves a troublesome well pollution problem for several residents in Washington, Pennsylvania. It is a problem that is not easily addressed in the context of this case given the facts presented.

PAWC’s Tariff Rule 27.1(F) provides:

Where substantial public need exists and the public health and safety may be compromised by the absence of a public water supply in a portion of the Company’s authorized service territory, the Company, subject to the Commission’s prior approval, may install main extensions and Special utility services facilities without the payment of the Customer Contribution that would otherwise be required under subparagraphs (A)(3) and (D)(2), respectively of the Rule 27.1.

Pennsylvania-American Water Co. Water Tariff, Supplement No. 2 to Tariff Water Pa. PUC No. 5, First Revised Tariff Page No. 89 (effective Jan. 1, 2018).

The unfortunate circumstances presented by the well contamination of the several residences should be remedied, but the crucial question is by whom and at what cost. The record evidence reflects substantial costs associated with the main extensions proposed by the OCA, coupled with the fact that only a few residences would be served off of the main extensions. By agreeing to communicate with the Attorney General and the alleged well polluters, PAWC has taken a prudent approach to having the cost causer remedy the water supply problem for these few remote residents in Areas 1 and 2.

Furthermore, we are not convinced on this record that “substantial public need” as that term is used in Rule 27.1(F) has been demonstrated, where service to only a few residential customers is in play, but investments totaling over $600,000 are contemplated to achieve the service. Moreover, we agree with PAWC that the OCA’s claim of “potential” additional customers and sources of funding, is mere speculation and not a valid basis upon which to order substantial investment in the requested main extensions. We must, therefore, conclude that PAWC ratepayers should not bear the costs associated with remedying this well contamination issue at this time.

This is especially the case where at least one of the residences involved is outside of PAWC’s certificated territory and Tariff Rule 27.1(F) would be by its explicit terms inapplicable, unless PAWC would apply for and acquire a certificate of public convenience to provide the service. We accept the well-founded Findings of Fact gleaned by the ALJ from the record as supportive of PAWC’s position on this issue and, thus, we shall deny the OCA’s Exception No. 16.

#### g. Sewage Backups (OCA Exception No. 17)

##### Position of the Parties

The OCA recommended that PAWC be required to ensure that implementation of the Long-Term Control Plans (LTCP) does not cause more sewage backups in existing or new service areas. The OCA cited the testimony of its witness, Mr. Fought, who addressed sewers backing up into basements in areas served by combined sewers. OCA St. 6SR at 5-6. The OCA also requested that PAWC be directed to provide information to its customers that have basements connected to combined sewers informing them on how to eliminate sewage backups. *Id.* The OCA noted that PAWC did not address these recommendations in its testimony. OCA M.B. at 108.

PAWC responded to Mr. Fought’s testimony asserting that the Company should define what storm frequencies constitute an “Act of God” and an “Act of Nature” for which the Company would not be liable under the limitation of liability section of PAWC’s tariff. PAWC submitted that it would be unreasonable for the Commission to require the Company to define the exact frequency of storms that would constitute and “Act of God” or an “Act of Nature.” PAWC M.B. at 70. The Company argued that it cannot make an arbitrary determination on what frequency of storms would qualify as an “Act of God.” The Company suggested that such events must be considered on an individual basis. *Id.*

In its Reply Brief, the OCA stated that the only outstanding issues related to sewage backups are Mr. Fought’s recommendations that PAWC be required to: (1) ensure that implementation of the Company’s LTCPs does not cause more sewage backups in existing or new service areas; and (2) provide information to its customers that have basements connected to combined sewers informing them on how to eliminate sewage backups. OCA R.B. at 36, citing OCA St. 6SR at 5-6. The OCA claimed the Company did not address these recommendations and, as such, the OCA’s position should be adopted. *Id.*

PAWC replied that the Company’s LTCPs are implemented in accordance with applicable regulations and that the Company certainly tries to minimize all sewage backups, but the Commission should deny the OCA’s argument that the Company should “make sure” the implementation of LTCPs do not cause sewage backups. PAWC R.B. at 70. Further, the Company stated that it will provide information to customers that have basements connected to combined sewers on options on eliminating sewage backups. *Id.*

##### Recommended Decision

The ALJ rejected, without discission, the OCA’s proposal that PAWC be required to ensure that implementation of the Long-Term Control Plans does not cause more sewage backups in existing or new service areas. The ALJ made two Findings of Fact on the sewage back up issue, noting first that the limitation of liability section of the Company’s tariff provides that, among other things, the Company shall not be liable to customers or third parties for losses or damages involving an “Act of God.” R.D. at 77, FOF 214. In addition, the ALJ acknowledged that OCA witness Fought had asserted that the Company should define what storm frequencies would constitute an “Act of God” or “Act of Nature” for which the Company would not be liable. R.D. at 77, FOF 215, citing OCA St. 6SR at 5.

##### OCA Exception No. 17 and Replies

In its Exception No. 17, the OCA avers that it was error for the ALJ to fail to discuss or make any findings regarding the OCA’s recommendation that PAWC be required to: (1) ensure the implementation of the LTCPs do not cause more sewage backups; and (2) provide information to its customers with basements connected to combined sewers about how to eliminate sewage backups. The OCA cites its testimony and claims that PAWC did not address or refute these recommendations. OCA St. 6SR at 5-6, OCA M.B. at 108 and OCA R.B. at 36. The OCA submits that the ALJ erred by not recommending that PAWC be required to take these actions to protect customers from sewage backups. As such, the OCA respectfully requests the Commission adopt its recommendation. OCA Exc. at 38.

PAWC replies that the OCA is seeking a directive requiring PAWC to ensure that implementation of its LTCPs do not cause backups. PAWC disagrees that the ALJ erred by not adopting the OCA’s recommendation which is, according to PAWC, without merit. PAWC R. Exc. at 25. PAWC states that it will continue to minimize backups and implement its LTCPs in accordance with applicable regulations. PAWC notes that the OCA also would require PAWC to provide information to its customers that have basements connected to combined sewers on options for eliminating sewage backups. PAWC indicates that it has agreed to provide this information to its customers. PAWC R. Exc. at 25, n. 1 and PAWC R.B. at 70. For each of these reasons, PAWC submits that the OCA’s request should be denied.

##### iv. Disposition

Upon review of the OCA’s Exception No. 17, regarding sewage backup prevention assurances, the exception is denied. As the ultimate finder of fact, the Commission determines that, based on the evidence of record and PAWC’s representations that, provided PAWC continues to minimize backups and implement its LTCPs in accordance with applicable regulations, reasonable service standards are being employed by PAWC. By so stating, we are not absolving PAWC of its obligations under Section 1501 of the Code nor discouraging customers from utilizing the regulatory service protections afforded under the Code to bring complaints regarding service inadequacies to the Commission for resolution should they arise. We also note with favor that PAWC has agreed to the OCA’s request that it provide information on options for eliminating sewage backups to customers that have basements connected to combined sewers. PAWC R. Exc. at 25, n. 1 and PAWC R.B. at 70.

### 9. Tariff Changes: Limitation of Liability (OCA Exception No. 18)

#### a. Position of the Parties

PAWC proposed revisions to its limitation of liability tariff provisions to: (1) harmonize its water and wastewater tariffs, PAWC St. 4-R at 18; (2) limit liability for interruptions in service comparable to provisions in other companies’ water tariffs consistent with the PUC’s Statement of Policy at 52 Pa. Code §69.87; (3) clarify that PAWC is not an insurer and has not undertaken to prevent injury from fire; and (4) add a paragraph on customer indemnification based on similar provisions in other utilities’ tariffs.

PAWC’s Proposed Rule 15 states, in relevant part:

[t]he Company shall not be liable to any Customer or third party for any loss or damage due to any negligent, reckless or intentional act of omission or commission, by the Company, its employees or agents

1. where the loss or damage involves an act of God, accident, strike, storm, riot, fire, flood, epidemic, pandemic, or any other cause beyond the Company’s control;
2. where the loss or damage does not involve a duty of the Company, its employees or agents, including breaks or leaks on facilities that are not owned by the Company, such as breaks, leaks, defects or conditions in facilities of other utilities located in the same trench or in the Customer’s own service line, meter vault, pressure reducing valve, back flow prevention device, check valve, pressure relief valve, or any other control valve, internal plumbing or fixture, or any other device installed on the customer facility, or due to the materials out of which those facilities are made;
3. where the loss or damage does not involve a breach of a duty of the Company, its employees or agents, including where the Company does not receive actual notice, either written or oral, that a Company facility (located within the public right-of-way, in a sidewalk or on a Customer’s property) is in need of repair, such as the condition or elevation of a vault, meter pit, curb box or valve box that is not proven to have been in that condition at the time of installation or that is caused by a plumber, developer, facility owner or other person or event; or
4. where the claim involves strict products liability, breach of contract, or breach of actual or implied warranties of merchantability or fitness for a particular purpose, express or implied.

Supplement No. 19 to Tariff Water – Pa. P.U.C. No. 5 at 64-65 (modifying the language to Rule 15, Liability of Company and eliminating Rules 15.1-15.3). Comparable changes are proposed for PAWC’s wastewater tariff at Supplement No. 19 to Tariff Wastewater – Pa. P.U.C. No. 16 at 35, 52 (modifying the language to Rule Q, Liability of Company and eliminating Rules Q.1-Q.3).

The OCA opposed the proposed tariff changes, arguing that they are overly broad and would limit liability for negligent actions for injury or damages that are not related to interruption or cessation of service and limit liability for injury or damage resulting from intentional actions. OCA M.B. at 109, citing OCA St. 5 at 21-22 and OCA St. 5SR at 18-19. The OCA contended that the Company’s proposed language improperly limits PAWC’s liability for reckless and intentional actions. OCA M.B. at 109-111, citing OCA St. 5 at 22; OCA St. 5SR at 18-19. Accordingly, argued the OCA, PAWC’s tariffs should be revised to eliminate the overly broad limitation of liability proposed.

The OCA disagreed with PAWC’s contention that the proposed tariff does not in fact eliminate liability, but only does so under certain conditions. *Id.* The OCA’s witness Alexander stated that it is not readily apparent to what circumstances one or more of the tariff conditions would or would not apply. OCA M.B. at 109-110, citing OCA St. 5 at 21-22; OCA St. 5SR at 18-19. Further, the OCA argued, PAWC’s extensive list of conditions is not the type of “narrow and limited” exception for negligent behavior allowed by the Courts.[[45]](#footnote-46) *See, e.g., DeFrancesco; Behrend.* The OCA also contended that PAWC’s language also improperly expands the scope of the limitation of liability beyond actions relating to the “interruption or cessation of service” authorized by the Commission’s policy statement, 52 Pa. Code § 69.87. OCA M.B. at 109-110. The OCA also disagreed that PAWC’s contention that its proposed limitation of liability is not out of line with other Pennsylvania utilities. OCA M.B. 109-111. The OCA pointed out that PAWC’s proposed tariff is the only one that expressly limits liability for reckless or intentional actions and none of the utilities that Ms. Everette references contain that express limitation. The OCA noted that National Fuel Gas Distribution Corporation’s (NFG) tariff specifically rejects that limitation. NFG’s tariff states:

[t]he Company shall not be liable in any amount for damages, direct or consequential, where service meets requirements of the Public Utility Code. This limitation of liability, however, shall not apply to Company conduct which is found to be willful, wanton or reckless.

*Id*.

The OCA pointed out that PAWC witness, Ms. Everette, had recognized that PECO Energy Company’s tariff expressly excludes willful misconduct from its limitation of liability provision. PAWC St.4-R at 21, n. 10, OCA M.B. at 111. The OCA observed that other Pennsylvania utilities, including UGI Electric and UGI Central Penn Gas, also expressly exclude negligent actions from their limitation of liability provisions.

The OCA argued that PAWC’s proposed limitation provisions also are broader than tariffs approved for its American Water affiliates. OCA M.B. at 111, citing OCA St. 5 at 22-23. As an example, New Jersey American Water does not include any generic limitation on liability and its limitation for liability for multi-use service provides that the Company may be liable if the harm was caused by its own negligence. In addition, West Virginia American Water limits liability for acts “beyond its control,” but not for reckless or negligent acts of its employees or agents. *Id.* at 23. For these reasons, the OCA submitted that PAWC’s proposed revisions to the limitation of liability provisions in its tariff should be denied. OCA M.B. at 111.

#### b. Recommended Decision

The Recommended Decision implicitly accepts PAWC’s proposed tariff revisions as reasonable and rejects the OCA’s arguments to the contrary by allowing the tariff changes agreed to in the Settlement to be made, as evidenced by Conclusions of Law 5 and 6 and Ordering Paragraphs 2 and 3. R.D. at 128-129.

The Recommended Decision outlined the respective positions of the Parties regarding the Settlement, therein noting the OCA’s opposition to the Joint Petitioners’ request for the Commission to approve PAWC’s proposed revisions to its water and wastewater limitation of liability tariff provisions. R.D. at 99-100, citing OCA Comments in Opposition at 12-13. The ALJ discussed the Company’s claim that the Settlement’s proposed tariff provisions are reasonable under Pennsylvania law, consistent with other Commission-approved tariffs, and consistent with Commission policy. R.D. at 99-100, citing PAWC Reply to Comment at 24. The ALJ also discussed PAWC’s argument that, as a matter of public policy, tariff provisions that limit the liability of public utilities for acts beyond their control are in the public interest and have historically been permitted by the Commission. R.D. at 99-100, citing PAWC Reply to Comment at 24; PAWC M.B. at 72-74 and PAWC R.B. at 70-71.

The ALJ explained that the Settlement was approved as a whole, including an agreement that the limitation of liability provisions proposed by PAWC are included in proposed tariffs (Appendices A – Water and B – Wastewater). R.D. at 115, citing Joint Petition ¶ 72. The ALJ reiterated, without discussion, that the OCA opposes these tariff provisions as not in the public interest and not supported by the record in the proceeding.

#### c. OCA Exception No. 18 and Replies

In its Exception No. 18, the OCA claims that the ALJ erred in accepting PAWC’s proposed limitation of liability language. OCA Exc. at 38-39. The OCA stresses that the Commission’s Policy Statement specifies that “[S]tate law permits utilities to limit their liability for interruption or cessation of service.” 29 *Pa. B*. 2147-2148. The OCA submits that, if PAWC’s proposed language were to be approved, it would apply to injury or damages that are not related to cessation of service, including personal injury, which is in direct contradiction to the following statement by the Commission:

The limitation may apply in the event of interrupted service or property damage only, and not personal injury. No consumer should be expected to bear the burden of personal injury or death in order to maintain reasonable rates for all consumers.

*Id.* at 2148.

The OCA takes issue with the ALJ’s finding that, among other things, “PAWC’s proposal protects PAWC and its customers from plaintiffs seeking ‘deep pockets’ that are increasingly targeting utilities.” R.D. at 85 (Finding #256). The OCA asserts that the Commission addressed this concern in its Policy Statement stating that it is appropriate to permit limitations on liability for negligent acts in certain cases. 29 *Pa. B.* at 2148. The OCA points out that, in the Policy Statement, the Commission adopts (and quotes at length from) the analysis in a March 17, 1997 Declaratory Order. The Commission specified that, while the 1997 Declaratory was vacated, “we did not abandon the above-cited analysis of the March 17, 1997, Declaratory Order.” *Id.*

According to the OCA, the Policy Statement does not support limiting liability for reckless and intentional actions. The OCA argues that this is consistent with the cases cited in the Policy Statement and the cases cited by PAWC in its Main Brief.[[46]](#footnote-47) Neither *DeFrancesco* nor *Behrend* support limiting liability for reckless or intentional acts, they address negligence only. PAWC’s existing water tariff limits liability for negligence only and the Company should not be permitted to broaden that language to include reckless and intentional acts.

In reply, PAWC argues that the ALJ properly approved PAWC’s proposed limitation of liability tariff provisions, which improve upon PAWC’s existing limitation of liability tariff provisions.

PAWC claims that the OCA opposes the Company’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. PAWC submits that, 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. PAWC R. Exc. at 25-26.

#### d. Disposition

We agree with the OCA that PAWC’s proposed revisions to its limitation of liability tariff provisions go beyond the limitations contemplated by the Commission’s Policy Statement at 52 Pa. Code § 69.87 and the case law. PAWC’s proposed language is very broad and is not tailored to circumstances involving the interruption or cessation of service, which the Policy Statement delineated as the relevant scope of limitation.

Furthermore, PAWC’s proposed revisions extend far beyond the contemplation of limitation of liability for negligent acts, which was the clear focus of the Policy Statement. As pointed out by the OCA, other utilities’ limitation of liability tariff provisions are nowhere near as broad in scope and potential application as that proposed by PAWC in this case.

PAWC bore the burden of establishing the reasonableness of its proposed tariff revisions and it has failed to do so on this record. We reject the revisions as overly broad and lacking clarity. We further determine that there is no basis to approve tariff language that is overreaching simply because PAWC asserts its other tariffs already contain similar language. We disagree with PAWC’s casting of its tariff language in other jurisdictions and we hold fast to the concept that completely exculpatory limitations are not acceptable. A reasoned departure from prior approvals of proposed tariff language is necessary in this case to permit only those rules consistent with our Policy Statement and the case law to be employed.

Finally, while PAWC suggests that something short of wholesale rejection of the tariff language is advisable, no alternative language has been proposed for our consideration. In these circumstances and based upon this record, we reject the tariff provisions on limitation of liability as unreasonable and modify the Recommended Decision accordingly. We note that PAWC may submit revised tariff language on limitation of liability in a future tariff filing, which comports with the discussion herein. In the interim, PAWC continues to be afforded the protection under Section 1501 of the Code, even in extraordinary circumstances, provided the conduct of the utility is found to constitute reasonable provision of service. Accordingly, we shall grant the OCA’s Exception No. 18.

# V. Conclusion

Based on our review of the record and the positions of the Parties, we shall adopt the Parties’ Joint Petition and approve the Settlement as in the public interest. Additionally, we shall: (1) grant, in part, and deny, in part, the Exceptions of the OCA; (2) deny the Exceptions of the OSBA and the CAUSE-PA; and (3) adopt the ALJ’s Recommended Decision, as modified, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions, filed by the Office of Consumer Advocate on January 5, 2021, to the Recommended Decision of Administrative Law Judge Conrad A. Johnson, issued on December 23, 2020, are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Exceptions, filed by the Office of Small Business Advocate on January 5, 2021, to the Recommended Decision of Administrative Law Judge Conrad A. Johnson, issued on December 23, 2020, are denied, consistent with this Opinion and Order.
3. That the Exceptions, filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania on January 5, 2021, to the Recommended Decision of Administrative Law Judge Conrad A. Johnson, issued on December 23, 2020, are denied, consistent with this Opinion and Order.
4. That the Recommended Decision of Administrative Law Judge Conrad A. Johnson, issued on December 23, 2020, is adopted, as modified by this Opinion and Order.
5. That the Joint Petition for Non-Unanimous Settlement of Rate Investigation of the Pennsylvania-American Water Company, the Commission’s Bureau of Investigation and Enforcement and the Pennsylvania-American Water Large Users Group, which is supported by AK Steel Corporation and filed at Docket No. R‑2020‑3019369 and Docket No. R-2020-3019371, including all terms and conditions stated therein, is granted and the Joint Settlement is thereby approved, as modified by this Opinion and Order.
6. That the Pennsylvania-American Water Company is authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations, consistent with the findings herein, and Appendices attached to the Joint Petition for Non-Unanimous Settlement, as modified by this Opinion and Order, to produce an increase in operating revenues of $70.5 million (based on pro forma present rate revenues) to become effective as of January 28, 2021, subject to mitigation measures. Specifically, the increase of $70.5 million will be phased-in over two years and offset by annualized credits of $10.5 million in 2021 and 2022.
7. That Pennsylvania-American Water Company tariffs, tariff supplements and/or tariff revisions may be filed to become effective on at least one day’s notice after entry of the Commission’s Order approving the Settlement.
8. That Pennsylvania-American Water Company and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania shall comply with the terms of the Stipulations submitted in this proceeding as though each term therein were the subject of an individual ordering paragraph.
9. That Pennsylvania-American Water Company and the Commission on Economic Opportunity shall comply with the terms of the Stipulation submitted in this proceeding as though each term therein were the subject of an individual ordering paragraph.
10. That the formal complaints of the Pennsylvania-American Water Large Users Group at Docket No. C-2020-3020238 (Water) and No. C-2020-3020240 (Wastewater) be deemed satisfied and marked closed.
11. That the following formal complaints at the respective docket numbers be dismissed and marked closed by the Commission’s Secretary’s Bureau:

Complainant(s) Docket Number (Water)

Office of Consumer Advocate C-2020-3019751

Office of Small Business Advocate C-2020-3019767

Jessica and Jeffrey LaBarge C-2020-3019627

Mr. and Mrs. Gerald S. Lepre, Jr. C-2020-3019646

Victoria Lozinak C-2020-3019778

Charles and Jennifer Spryn C-2020-3019905

Cherise H. Sympson C-2020-3020209

David Dollard C-2020-3020219

Jan K. Vroman C-2020-3020220

Anna-Maria Rucci C-2020-3020245

West Norriton Township C-2020-3020401

Andrew Wu C-2020-3020497

Timothy Fuhrmann C-2020-3020516

Terrence Reilley and Dorothy Reilley C-2020-3020524

Ahmed Rashed C-2020-3020546

Dennis Gore C-2020-3020547

Bryan A. Stephen C-2020-3020699

Sam Galdieri C-2020-3020841

Robert D. and Maryann Reardon C-2020-3020842

Maria Moceri C-2020-3020843

Dennis Sweigart C-2020-3020845

Anne Leithiser C-2020-3020846

Sharon Higinbotham C-2020-3020851

Diane Vottero C-2020-3020852

Linda C. Denby C-2020-3020887

Michael Palin C-2020-3020888

Ron Bair, Jr. C-2020-3020889

Michael Andrews C-2020-3020892

Thomas Blakely C-2020-3020893

Pamela Blakely C-2020-3020894

Shannon Haig C-2020-3020933

Randy and Sandra McKinley C-2020-3020934

Timothy Peter Walsh C-2020-3020935

Andrew D. Sproat C-2020-3020936

John Norton C-2020-3020937

Christopher Visco C-2020-3020938

Tom E. Will C-2020-3020939

East Norriton Township C-2020-3021060

Robert Redinger, Jr. C-2020-3021167

Leroy James Watters, III C-2020-3021380

Gregory and Catherine Gannon C-2020-3021381

Paul Trizonis C-2020-3022050

|  |  |
| --- | --- |
| Complainant(s) | Docket Number (Wastewater) |
| Office of Consumer Advocate | C-2020-3019754 |
| Office of Small Business Advocate | C-2020-3019772 |
| Jessica and Jeffrey LaBarge | C-2020-3019627 |
| Mr. and Mrs. Gerald S. Lepre, Jr. | C-2020-3019646 |
| William H. Rissmiller | C-2020-3020198 |
| David Dollard | C-2020-3020219 |
| Terrence Reilley and Dorothy Reilley | C-2020-3020524 |
| Dennis Gore | C-2020-3020547 |
| Hal H. Harris | C-2020-3020563 |
| Svetlana Perminova and Viktor Ushenko | C-2020-3020829 |
| Sam Galdieri | C-2020-3020841 |
| Timothy Peter Walsh | C-2020-3020935 |
| Christopher Visco | C-2020-3020938 |
| Gregory and Catherine Gannon | C-2020-3021381 |

1. That upon acceptance and approval by the Commission of the appropriate compliance filings, tariffs, tariff supplements or tariff revisions filed by Pennsylvania-American Water Company consistent with this Opinion and Order, this proceeding at Docket No. R-2020-3019369 (Water) and Docket No. R-2020-3019371 (Wastewater) shall be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 25, 2021

ORDER ENTERED: February 25, 2021



**APPENDIX D**

***Summary of Revenue Increase***

**Appendix D**

**Summary of Settlement Revenue Increase**

|  |  |  |
| --- | --- | --- |
| January 28, 2021 through December 31, 2021 (“Step 1”):\* | January 1, 2022 through January 27,  2023 (“Step 2”):\*\* | January 28, 2023 and forward: |
| Step 1 Base Rate Increase: $50.5 M  Step 1 Annualized Credit: $(10.5) M  Step 1 Net Increase: $40.0 M | Step 1 Base Rate Increase: $ 50.5 M  Step 2 Base Rate Increase: $ 20.0 M  Step 2 Annualized Credit: $(10.5) M  Step 2 Net Increase: $60.0 M | Total Base Rate Increase: $70.5 M  Credit: $ (0)  Net Increase: $70.5 M |

\* The figures for Step 1 are annualized (i.e., they reflect the base rate revenue increase, credit and net increase for a full twelve-month period ending December 31, 2021. However, because the end of the suspension period and effective date for rates established in this case is January 28, 2021, the base rate revenue increase and credit and, therefore, the net increase the Company will realize in 2021 (Step 1), will be only approximately 92% [(365-28)/365] of the annualized amounts shown in the table above. As shown above, the credit will expire by January 28, 2023.

\*\* The base rate increases, credit and net increase are annualized (i.e., stated on the basis of a twelve-month period).

**APPENDIX E**

***Amortizations***

**Pennsylvania American Water Company**

**Water Operations**

**Settlement**

**Appendix E, Amortizations**

Amortization Unamortized

Period Balance Amortization Annual

Case Approved Docket No. (Years) 12/31/2020 End Date Amortization Reference

**Water Operations**

**Positive Utility Plant Acquisition Adjustments**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| PG&W | Docket No. R-973944 | 40 | $7,637,270 | 9/30/2037 | $455,956 | Exhibit 3-A, p. 33 |
| Saxonburg Area Authority | Docket No. R-2011-2232243 | 10 | 36,702 | 10/31/2021 | 36,702 | Exhibit 3-A, p. 33 |
| Birch Acres Waterworks Inc. | Docket No. R-2011-2232243 | 10 | 5 20 | 10/31/2021 | 5 20 | Exhibit 3-A, p. 33 |
| Lake Spangenberg Water Co. | Docket No. R-2013-2355276 | 10 | 41,125 | 12/31/2023 | 13,709 | Exhibit 3-A, p. 33 |
| Fernwood Community Water System | Docket No. R-2013-2355276 | 10 | 16,892 | 12/31/2023 | 5,630 | Exhibit 3-A, p. 33 |
| Olwen Heights Water Service Co.  **Negative Utility Plant Acquisition Adjustments** | Docket No. R-2013-2355276 | 10 | 16,185 | 12/31/2023 | 5,396 | Exhibit 3-A, p. 33 |
| Boggs Township | Docket No. R-2011-2232243 | 10 | (22,626) | 10/31/2021 | (22,626) | Exhibit 3-A, p. 62 |
| Amwell Municipal Authority | Docket No. R-2011-2232243 | 10 | (17,179) | 10/31/2021 | (17,179) | Exhibit 3-A, p. 62 |
| Sutton Hills Homeowners Assn | Docket No. R-2011-2232243 | 10 | (5,806) | 10/31/2021 | (5,806) | Exhibit 3-A, p. 62 |
| Indian Rocks Prop. Owners Assoc. | Docket No. R-2013-2355276 | 10 | (3,703) | 12/31/2023 | (1,234) | Exhibit 3-A, p. 62 |
| North Fayette County Mun. Auth | Docket No. R-2013-2355276 | 10 | (188,899) | 12/31/2023 | (62,966) | Exhibit 3-A, p. 62 |
| Wildcat Park Corporation | Docket No. R-2013-2355276 | 10 | (24,814) | 12/31/2023 | (8,271) | Exhibit 3-A, p. 62 |
| Turbotville Water **Other Amortizations** | Docket No. R-2020-3019369 | 10 | (816,010) | 1/28/2031 | (81,601) | Exhibit 3-A Revised, p. 62R |
| Demand Study | Docket No. R-2017-2595853 | 10 | 186,963 | 12/31/2027 | 26,709 | Exhibit 3-B p. 354 |
| Lead Service Line Costs | Docket No. R-2020-3019369 | 10 | 252,241 | 1/28/2031 | 25,224 | Exhibit 3-B p. 354 |
| DEP Safe Drinking Water Fees | Docket No. R-2020-3019369 | 3 | 1,676,000 | 1/28/2024 | 558,667 | PAWC Statement No. 4R, p. 11 |
| Turbotville Water Transaction costs | Docket No. R-2020-3019369 | 10 | 10,816 | 1/28/2031 | 1,082 | Exhibit 3-A, p. 33 |
| Equipment Discount | Docket No. R-2020-3019369 | 20 | (553,806) | 1/28/2041 | (27,690) | Exhibit 3-A Revised, p. 35R |
| Receivership - Winola Water | Docket No. R-2020-3019369 | 10 | 406,190 | 1/28/2031 | 40,619 | Exhibit 3-A Revised, p. 34R |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Total Water Operations Excluding Steelton**  **Steelton Water Operations** |  |  | **$8,648,061** |  | **$942,841** |  |
| Steelton Transaction Costs | Docket No. R-2020-3019369 | 10 | $158,976 | 1/28/2031 | $15,898 | Exhibit 3-A, p. 90 |
| Steelton DEP Safe Drinking Water Fees | Docket No. R-2020-3019369 | 3 | 10,000 | 1/28/2024 | 3,333 | PAWC Statement No. 4R, p. 11 |
| Steelton Post-in-service AFUDC | Docket No. R-2020-3019369 | 3 | 1,790 | 1/28/2024 | 5 97 | Exhibit 3-A, p. 111 |
| Steelton Deferred Depreciation | Docket No. R-2020-3019369 | 3 | 5,693 | 1/28/2024 | 1,898 | Exhibit 3-A, p. 111 |

**Total Water Steelton Operations $176,459 $21,725**

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**Pennsylvania American Water Company**

**Wastewater SSS Operations**

**Settlement**

**Appendix E, Amortizations**

Amortization Unamortized

Period Balance Amortization Annual

Case Approved Docket No. (Years) 12/31/2020 End Date Amortization Reference

**Wastewater SSS Operations**

**Positive Utility Plant Acquisition Adjustments**

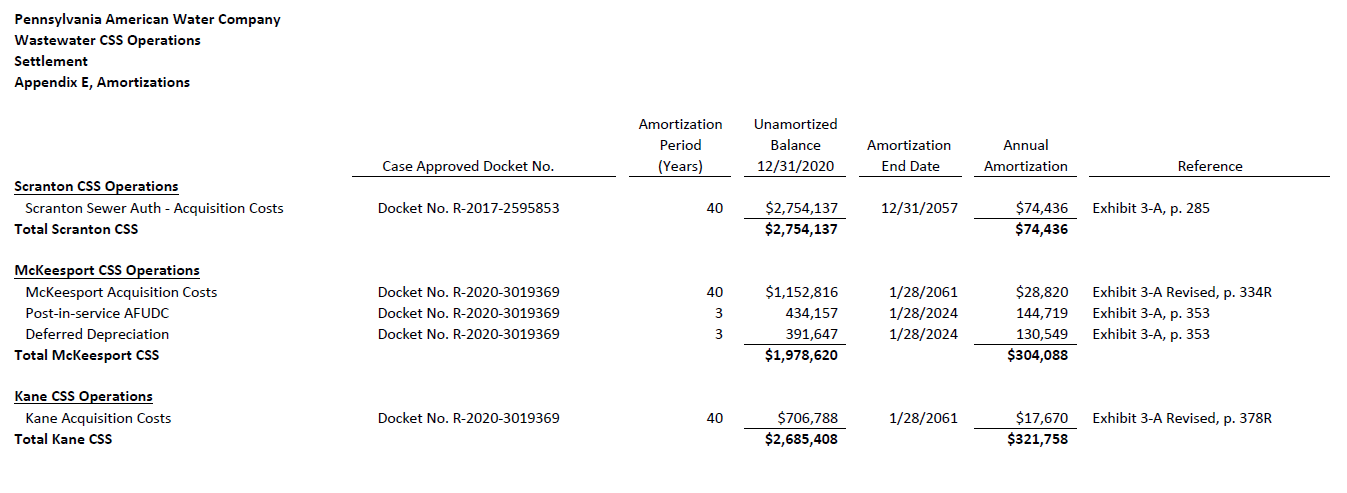
|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Clean Treatment Sewage Company | Docket No. R-2013-2355276 | 10 | $176,346 | 12/31/2023 | $58,782 | Exhibit 3-A, p. 146 |
| Delaware Sewer Acquisition Positive UPAA | Docket No. R-2020-3019369 | 10 | 61,700 | 1/28/2031 | 6,170 | Exhibit 3-A Revised, p. 146R |
| New Cumberland Borough WW Acq. Costs **Negative Utility Plant Acquisition Adjustments** | Docket No. R-2016-2544151 | 10 | 105,021 | 12/31/2027 | 15,003 | Exhibit 3-A, p. 146 |
| Turbotville WW Negative UPAA **Other Amortizations** | Docket No. R-2020-3019369 | 10 | (204,064) | 1/28/2031 | (20,406) | Exhibit 3-A Revised, p. 167R |
| Delaware Sewer Acquisition Transaction Costs | Docket No. R-2020-3019369 | 10 | 320,000 | 1/28/2031 | 32,000 | Exhibit 3-A Revised, p. 146R |
| Turbotville WW Transaction costs | Docket No. R-2020-3019369 | 10 | 6,597 | 1/28/2031 | 660 | Exhibit 3-A, p. 146 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Total Wastewater SSS Excluding Sadsbury and Exeter**  **Sadsbury SSS Operations** |  | **$465,600** |  | **$92,209** |  |
| Sadsbury Acquisition Costs Docket No. R-2020-3019369 | 10 | $261,101 | 1/28/2031 | $26,110 | Exhibit 3-A, p. 193 |
| Post-in-service AFUDC Docket No. R-2020-3019369 | 3 | 1,073 | 1/28/2024 | 358 | Exhibit 3-A, p. 210 |
| Deferred Depreciation Docket No. R-2020-3019369 | 3 | 1,668 | 1/28/2024 | 556 | Exhibit 3-A, p. 210 |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Total Sadsbury SSS**  **Exeter SSS Operations** |  |  | **$263,841** |  | **$27,024** |  |
| Exeter Acquisition Costs | Docket No. R-2020-3019369 | 40 | $1,052,872 | 1/28/2061 | $26,322 | Exhibit 3-A, p. 236 |
| Post-in-service AFUDC | Docket No. R-2020-3019369 | 3 | 7,792 | 1/28/2024 | 2,597 | Exhibit 3-A, p. 256 |
| Deferred Depreciation | Docket No. R-2020-3019369 | 3 | 6,191 | 1/28/2024 | 2,064 | Exhibit 3-A, p. 256 |

**Total Exeter SSS $1,066,855 $30,983**

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**Pennsylvania American Water Company**

**Appendix E, Amortization of Tax Cuts and Jobs Act (TCJA)**

**Stub Period and Reconciliation**

Amortization Unamortized

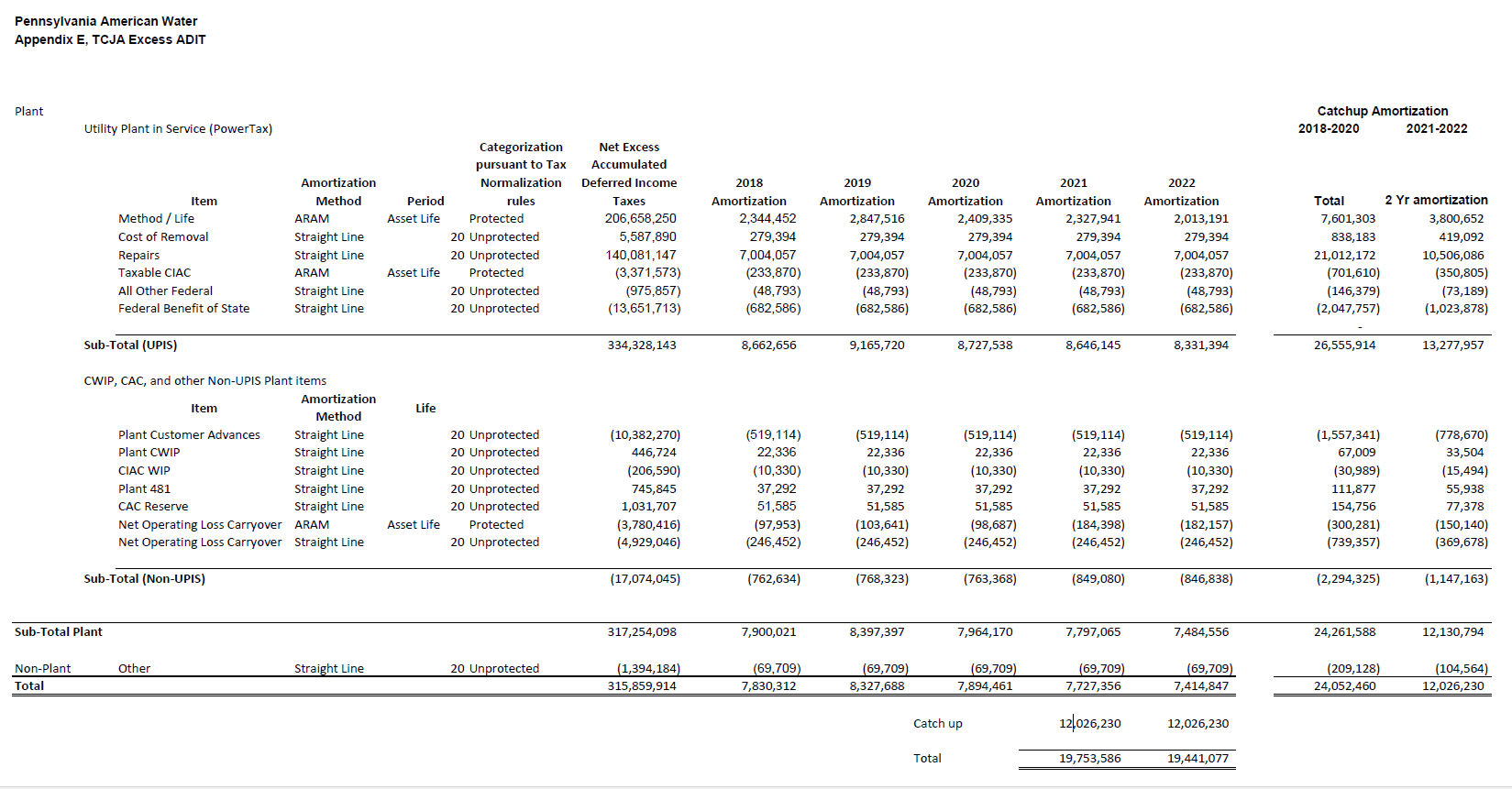
Period Balance Amortization Annual

Case Approved Docket No. (Years) 12/31/2020 End Date Amortization Reference

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Water | Docket No. R-2020-3019369 | 3 | ($22,633,729) | 1/28/2024 | ($7,544,576) | Exhibit 3-A, p. 36 |
| Wastewater | Docket No. R-2020-3019369 | 3 | (1,059,468) | 1/28/2024 | (353,156) | Exhibit 3-A, p. 147 |
| Scranton Wastewater | Docket No. R-2020-3019369 | 3 | (693,301) | 1/28/2024 | (231,100) | Exhibit 3-A, p. 286 |

**Total ($24,386,498) ($8,128,832)**

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1. As noted *infra*., by Opinion and Order entered June 4, 2020, Docket Nos. R-2020-3019360 and R-2020-3019371 and all Complaints filed with respect thereto, were consolidated for further proceedings and disposition, without objection. [↑](#footnote-ref-2)
2. As specified in the above-referenced Docket Nos., Formal Complaints were also filed by individual customers who did not elect to be active parties in this case. [↑](#footnote-ref-3)
3. At the Prehearing Conference, Docket Nos. R-2020-3019369 and R‑2020‑3019371 and all complaints were consolidated for further proceedings and resolution. [↑](#footnote-ref-4)
4. At the request of the parties, the ALJ cancelled the hearing scheduled for October 26, 2020. [↑](#footnote-ref-5)
5. 1 Pa. C.S. § 1922(1), *PA Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430-431, 64 A.2d 84, 87 (1995). [↑](#footnote-ref-6)
6. We note that, by our adoption of the Settlement and the ALJ’s Recommended Decision, we also adopt the terms of the Stipulations entered between PAWC and two Non-Settling Parties, the CAUSE-PA and the CEO, which provide for important terms and conditions in the interest of consumers. We commend the Parties for reaching mutual agreement on the issues addressed therein. While not contained in the Settlement, the agreements arose under the good faith negotiations between the Parties during this rate proceeding and serve an important benefit to the public interest. Finally, we note that the agreements reflect the Company’s voluntary efforts to enhance benefits to its customers. [↑](#footnote-ref-7)
7. *Popowsky II*, 683 A.2d at 961 (“[t[he PUC has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.”). [↑](#footnote-ref-8)
8. *Kentucky Public Service Commission, Electronic Application of Kentucky-American Water Co. for an Adjustment of Rates*, Case No. 2018-00358 at 43-44 (July 27, 2019); *A**pplication of California-American Water Company*, 2018 Cal. PUC LEXIS 628 (Cal. P.U.C. December 20, 2018). OCA Exc. at 14. [↑](#footnote-ref-9)
9. *See* PAWC M.B. at 57; PAWC R.B. at 59. [↑](#footnote-ref-10)
10. Section 1311(c) of the Code, Pa. C.S. § 1311(c), provides, in relevant part, that the Commission, “when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.” [↑](#footnote-ref-11)
11. PAWC St. 4 at 32-33; PAWC St. 12 at37. [↑](#footnote-ref-12)
12. These allocations are annual, not cumulative, amounts. Therefore, the maximum allocation each year after the Step 2 will not exceed $21.5 million. PAWC R. Exc. at 18, n.73. [↑](#footnote-ref-13)
13. Joint Petition Statement A at 7. [↑](#footnote-ref-14)
14. Ms. Heppenstall allocated stormwater costs in the same manner as infiltration and inflow costs in a sanitary sewer system consistent with the WEF Manual. FOF No. 129; PAWC St. 12 at 25-35. [↑](#footnote-ref-15)
15. 66 Pa. C.S. § 1311(c) provides that “the commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.” [↑](#footnote-ref-16)
16. Under Section 1329 of the Code, 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. [↑](#footnote-ref-17)
17. *See* *Bluefield*. [↑](#footnote-ref-18)
18. I&E Statement in Support, p. 14. [↑](#footnote-ref-19)
19. *Lloyd v. Pa. PUC*, 904 A.2d 1010, at 1020 (Pa. Cmwlth. 2004) *(Lloyd)*. [↑](#footnote-ref-20)
20. Section 1311(c), in its entirety, is stated as follows: “**(c) Segregation of property.—**When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. **A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest (Emphasis added).** [↑](#footnote-ref-21)
21. OCA Exc. at 28,citing OCA St. 1 at 65-70; OCA M.B. at 74-76; [↑](#footnote-ref-22)
22. *See,* *Bluefield*. [↑](#footnote-ref-23)
23. Section 1329(c) in its entirety is stated as follows:

    **(c) Ratemaking rate base.—**The following apply:

    (1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

    (i) the acquiring public utility during the acquiring public utility’s next base rate case; or

    (ii) the entity in its initial tariff filing.

    (2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility. [↑](#footnote-ref-24)
24. PAWC R. Exc. at 19, citing PAWC St. 1 at 35-3. [↑](#footnote-ref-25)
25. *See Pa. PUC v. Philadelphia Suburban Water Co*., 75 Pa. P.U.C. 391, 440 (1991). [↑](#footnote-ref-26)
26. Ms. Heppenstall subsequently accepted, in her rebuttal testimony, three revisions to the cost of service study for PAWC’s water operations excluding Steelton water studies as proposed by the OCA, witness, Mr. Rubin. PAWC St. 12-R, pp. 2-3; PAWC Exhs. CEH-1R (Exhibit 12-A Revised). Schedule A of PAWC Exhibits CEH-1R and 12-B through 12-H summarizes the results of the applicable cost of service study and compares the costs of service by class to revenues under existing and proposed rates. PAWC M.B. at 52. [↑](#footnote-ref-27)
27. It is noted that, among other things, PAWC agreed to withdraw its proposed RY2 increase if the Commission approves the Settlement. R.D. at 39; Settlement, ¶ 33. [↑](#footnote-ref-28)
28. Appendix C to the Joint Petition. [↑](#footnote-ref-29)
29. The $10.5 million credit is a negative surcharge to flow-back to customers all (“protected” and “unprotected”) excess accumulated deferred income taxes (EADIT) that the Company amortized and will amortize for financial reporting purposes during the period from January 1, 2018 through December 31, 2020. The EADIT amortized by PAWC for financial reporting purposes that are being flowed-back by the two-year $10.5 million credit were booked to reflect the effect on the Company’s accumulated deferred income taxes of the change in the federal corporate net income tax rate from 35% to 21% pursuant to the Tax Cuts and Jobs Act (“TCJA”) that became effective on January 1, 2018. Settlement 19, ¶ 24. [↑](#footnote-ref-30)
30. Under Mr. Rubin’s Scale-Back proposal, the reduction in the revenue would first reduce the water Zone 1 subsidy in proportion to the subsidy paid by each customer class under PAWC’s proposal for Rate Year 1. Any remaining reduction would be applied proportionally to the rates in the particular rate zone. If the reduction is to the Water Zone 1 revenue requirement, then the reduction should be spread among customer classes in proportion to each class’s cost of service under Mr. Rubin’s cost of service study. Mr. Rubin further recommended that any reduction for the residential class be applied proportionally to both the customer charge and volumetric charge. OCA St. 1 at 94. [↑](#footnote-ref-31)
31. We addressed the Company’s concerns on the wastewater subsidy as separate matter, *supra*. [↑](#footnote-ref-32)
32. The specific Appendices of the proposed Settlement cited by the OCA here include: Appendix A and B (Tariffs), Appendix Cand D (Proof of Revenues) and Appendix G and H (Bill Comparisons). [↑](#footnote-ref-33)
33. *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). We note that Appendices A-C and F-H were filed separately on November 6, 2020 and were not included as attachments to the Settlement that was filed on October 30, 2020. [↑](#footnote-ref-34)
34. *See* PAWC R.B. at 54-57; PAWC Comments at 18-21. [↑](#footnote-ref-35)
35. See PAWC M.B. at 55-57. [↑](#footnote-ref-36)
36. I&E’s response centers primarily on customer charges, which was one of the rate structure elements the OCA specifically pointed out as not being supported by the record. OCA Exc. No. 8 at 25. [↑](#footnote-ref-37)
37. I&E St. 4 at 39. [↑](#footnote-ref-38)
38. *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). [↑](#footnote-ref-39)
39. In his direct testimony, the CAUSE-PA’s witness, Mr. Miller, uses the term “household utility burden” to refer to the percentage of a household income required to cover the cost of the bill. CAUSE-PA St. 1 at 25: 8-15. He notes that in Pennsylvania, there is no specific agency or government-defined standard for water or wastewater affordability, but “there is a general consensus among experts that a *combined* household water and wastewater burden should – conservatively – be no greater than 4.5% and should be proportionately lower for those at the lowest levels of poverty.” *Id.* [↑](#footnote-ref-40)
40. Dollar Energy Fund is the program administrator of PAWC’s H2O Program. PAWC St. 17-R at 6. [↑](#footnote-ref-41)
41. We note that in addition to the H2O Program design, the OCA’s Exception No. 10 also addresses customer outreach. We will discuss that portion of the OCA’s Exception No. 10, *infra*. [↑](#footnote-ref-42)
42. We note that, in addition to customer outreach, the OCA’s Exception No. 10 also addresses the H2O Program design. We discussed that portion of the OCA’s Exception No. 10, *supra*. [↑](#footnote-ref-43)
43. PAWC M.B. at 69; PAWC R.B. at 69. *See also* 52 Pa. Code § 65.6. [↑](#footnote-ref-44)
44. OCA Exc.at 36-37. *See also* PAWC R.B. at 69. [↑](#footnote-ref-45)
45. Courts have held that a tariff may limit a utility’s liability for interruption or cessation of service due to negligence but only in narrowly-defined circumstances. *See Tariff Provisions that Limit the Liability of Utilities for Injury or Damage as a Result of Negligence or Intentional Torts, Policy Statement*, 29 *Pa. B.* 2147-2149 (Nov. 19, 1998); *DeFrancesco v. West Penn Water Co.*, 329 Pa. Super. Ct. 508, 478 A.2d 1295 (1984) (DeFrancesco); *Behrend v. Bell*, 242 Pa. Super. Ct. 47, 363 A.2d 1752 (1976), *vacated on other grounds*, 473 Pa. 320, 374 A.2d 536 (1977) (*Behrend*). [↑](#footnote-ref-46)
46. *DeFrancesco*, 329 Pa. Super. Ct. 508, 478 A.2d 1295 (1984); *Behrend*, 242 Pa. Super. Ct. 47, 363 A.2d 1752 (1976), *vacated on other grounds*, 473 Pa. 320, 374 A.2d 536 (1977). [↑](#footnote-ref-47)