**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2022-3031672, *et al.*

:

v. :

:

Pennsylvania-American Water Company :

Pennsylvania Public Utility Commission : R-2022-3031673, *et al.*

:

v. :

:

Pennsylvania-American Water Company – :

Wastewater Division :

**SCHEDULING ORDER**

On April 29, 2022, Pennsylvania-American Water Company (PAWC) filed Supplement No. 35 to Tariff Water-PA. P.U.C. No. 5 (Supplement No. 35) with the Pennsylvania Public Utility Commission to become effective June 28, 2022. Supplement No. 35 would increase PAWC’s total annual operating revenues for water service by approximately $154.4 million, or 21.6%.

Also on April 29, 2022, the Pennsylvania-American Water Company – Wastewater Division (PAWC-WD) filed Supplement No. 34 to Tariff Wastewater PA P.U.C. No. 16 (Supplement No. 34) with the Commission to become effective June 28, 2022. Supplement No. 34 would increase PAWC-WD’s total annual operating revenues for wastewater service by approximately $18.7 million, or 16.1%.

On May 3, 2022, the Commission’s Bureau of Investigation and Enforcement (I&E) entered its appearance in both dockets. On May 4, 2022, the Office of Small Business Advocate (OSBA) filed a formal complaint in response to PAWC’s filing, docket number C-2022-3032331 and in response to PAWC-WD’s filing, docket number C-2022-3032346 on

May 5, 2022. On May 11, 2022, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a petition to intervene in both proceedings. On May 16, 2022, the Office of Consumer Advocate (OCA) filed a formal complaint in response to PAWC’s filing, docket number C-2022-3032485 and in response to PAWC-WD’s filing, docket number C-2022-3032487. On May 17, 2022, the Commission on Economic Opportunity (CEO) filed a Petition to Intervene in both rate dockets. On May 20, 2022, Cleveland-Cliffs Steel Company (Cleveland-Cliffs) filed a petition to intervene in both rate dockets. On May 31, 2022, Exeter Township (Exeter) filed a petition to intervene. On June 1, 2022, the Borough of St. Lawrence (St. Lawrence) filed a notice of appearance. On June 22, 2022, the Pennsylvania-American Water Large Users Group (PAWLUG) filed a complaint in both dockets. On June 23, 2022, Victory Brewing Company (Victory Brewing) filed a complaint in both dockets.

In addition, approximately fifty formal complaints were filed by PAWC and PAWC-WD customers in response to both rate dockets. A list of these formal complaints, and their assigned docket numbers, was admitted into the record on June 27, 2022 as ALJ Exhibit Number 1.

On June 16, 2022, by separate Orders, the Commission suspended both filings by operation of law until January 28, 2023, pursuant to Section 1308(d) of the Public Utility Code, unless permitted by the Commission to become effective at an earlier date. In both Orders, the Commission stated that investigation and analysis of the proposed tariff supplements and the supporting data indicate that the proposed changes in rates, rules and regulations may be unlawful, unjust, unreasonable and contrary to the public interest. The Commission also determined that consideration should be given to the reasonableness of the companies’ existing rates, rules and regulations. As a result, the Commission ordered that an investigation be instituted in response to both filings to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed tariff filings, as well as a consideration of the lawfulness, justness and reasonableness of the exiting rates, rules, and regulations. The Commission assigned the cases to the Office of Administrative Law Judge for Alternative Dispute Resolution, if possible, and for the prompt scheduling of hearings as may be necessary culminating in the issuance of Recommended Decisions.

On June 16, 2022, a hearing notice was issued for both filings establishing a telephonic prehearing conference for these matters for Monday, June 27, 2022 at 11:00 a.m. and assigning me as the presiding officer. A prehearing order was issued on June 16, 2022 setting forth rules that would govern the prehearing conference.

On June 24, 2022, prehearing memoranda were filed by the following parties: PAWC and PAWC-WD, I&E, OCA, OSBA, CAUSE-PA, CEO, PAWLUG, Cleveland Cliffs, Victory Brewing, St. Lawrence and Exeter.

The prehearing conference convened on June 27, 2022, as scheduled. The following parties were present: Brook McGlinn, Esquire, for PAWC and PAWC-WD; MacKenzie Battle, Esquire, for OCA; Gina Miller, Esquire, for I&E; Erin Fure, Esquire, for OSBA; Ria Perrera, Esquire, for CAUSE-PA; Joseph Vullo, Esquire, for CEO; Errin McCaulley, Esquire, for PAWLUG; Karen Moury, Esquire, for Victory Brewing; Joan London, Esquire, for St. Lawrence; and J. Chadwick Schnee, Esquire, for Exeter. Several consumer complainants also were present.

As an initial matter, the two separate rate filings, along with all of the complaints filed in response to them, were formally consolidated without objection. This includes the complaints filed against both rate filings by the OCA, OSBA, PAWLUG, Victory Brewing, as well as all of the more than 50 formal complaints filed by PAWC and PAWC-WD customers as identified in ALJ Exhibit Number 1. PAWC had previously filed a motion to consolidate the rate filings and that motion is now moot. In addition, the petitions to intervene filed by CAUSE-PA, CEO, Cleveland-Cliffs, St. Lawrence and Exeter were also granted, again without objection.

It was also agreed during the prehearing conference that any consumer complainant who wishes to remain an active party must affirmatively indicate as such by email to all the parties. Affirming the intent to remain an active party in this proceeding means, among other things, that the consumer complainant will continue to receive all emails and correspondence in this case. If a consumer complainant does not affirm their intent to remain an active party in this proceeding, that consumer complainant will no longer receive all emails and correspondence in this case. However, those consumer complainants will remain on the Commission’s official service list and will receive all documents issued by the Commission. These consumers also will be allowed to testify at a public input hearing in lieu of submitting written testimony.

Next, the parties agreed to the following litigation schedule:

|  |  |
| --- | --- |
| Non-Company Direct Testimony | July 29, 2022 |
| All parties’ Rebuttal Testimony | August 19, 2022 |
| All parties’ Surrebuttal Testimony | September 1, 2022 |
| Written Rejoinder or Outlines | September 6, 2022 |
| Evidentiary Hearings | September 8-14, 2022 |
| Main Briefs | September 29, 2022 |
| Reply Briefs | October 11, 2022 |

The evidentiary hearings will be held telephonically and begin at 10:00 a.m. A formal hearing notice will be sent separately. The Commission must act on these filing no later than its Public Meeting on January 12, 2023.

Furthermore, on June 24, 2022, PAWC and PAWC-WD filed a motion for leave to file supplemental direct testimony for certain of its witnesses. The parties agreed during the prehearing conference that answers to that motion must be filed no later than Friday, July 1, 2022. The parties also agreed during the prehearing conference that service by email only amongst the parties is acceptable. It is further noted that the parties were directed to provide a witness matrix prior to the evidentiary hearing identifying the estimated amount of cross each party has for each witness, if any. Furthermore, to the extent that certain issues are fully litigated and not settled, the parties were further directed to attach to their main briefs the standard rate case schedules that conform each parties’ position on the litigated issues, as would be further addressed at the evidentiary hearing, if necessary.

As part of the schedule, the parties discussed the need for public input hearings for purposes of obtaining input from PAWC and PAWC-WD’s customers regarding the rate filings. Commission policy provides at least one public input hearing should be held in a utility’s service area if the Commission determines there is substantial public interest in a rate proceeding. 52 Pa.Code § 69.321(b). Multiple parties expressed an interest in public input hearings being held, as is customary for a case of this magnitude. The parties requested that public input hearings be held telephonically during the week of July 18, 2022, with hearings being held both at 1:00 p.m. and 6:00 p.m. each day, and the OCA offered to assist in coordinating consumers being able to testify. A subset of the parties, namely, PAWC, OCA and I&E, will confer separately regarding logistics involving the public input hearings. The details of the public input hearings will be formalized by the issuance of hearing notice. The companies’ are directed to advertise the public input hearings in a timely fashion and to work with any interested parties in regard to the wording of the public input hearing announcements, and where and how the public input hearing announcements are to be published and/or broadcast. Prior to the initial public input hearing, the companies are to file with the Secretary’s Bureau, with a copy to the presiding officer, a document which provides the wording of the public input hearing announcement, where it appeared and on what dates.

The parties also discussed the need to modify the Commission’s regulations regarding discovery. The parties agreed to the following modifications:

1. Answers to written interrogatories and requests for document production, entry for inspection, or other purposes shall be served in-hand within ten (10) calendar days of service.
2. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within three (3) calendar days of service of the interrogatories; unresolved objections shall be served in writing to the propounding party within five (5) calendar days of service of the interrogatories and/or requests for production.
3. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of such motions.
4. Answers to motions to dismiss objections and/or answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of written objections.
5. Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
6. Answers to on-the-record data requests shall be served in-hand within five (5) calendar days of the requests.
7. Any discovery or discovery-related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day before a holiday will be deemed to have been served on the next business day for purposes of calculating the due date for any responsive filings.

These modifications will be adopted as part of this proceeding.

A discussion was held regarding the need for a protective order governing the treatment of information alleged to be proprietary. The companies filed a petition for a protective order on June 24, 2022. The parties will be given the time allowed by Commission regulation to file an answer to the companies’ motion. In the interim, the parties are encouraged to exchange information alleged to be proprietary pursuant to informal agreements amongst themselves, noting that the Commission regulations provide that the Commission’s records, including the record of this proceeding, may be accessed by the public pursuant to 52 Pa. Code §§ 1.71-1.77. In addition, the parties were instructed to inform the presiding officer immediately to the extent that any information may be exchanged that qualifies as confidential security information.

Finally, the parties were reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are reminded, however, that decisions of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Any settlement submitted for approval must be supported by substantial evidence.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Supplement No. 35 to Tariff Water-PA. P.U.C. No. 5 (Supplement No. 35) filed by Pennsylvania-American Water Company with the Pennsylvania Public Utility Commission to become effective June 28, 2022, docket number R-2022-3031672, and Supplement No. 34 to Tariff Wastewater PA P.U.C. No. 16 (Supplement No. 34) filed by Pennsylvania-American Water Company – Wastewater Division with the Commission to become effective June 28, 2022, docket number R-2022-3031673, are consolidated for purposes of Commission investigation and disposition.
2. That the formal complaints filed by the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania-American Water Large Users Group, Victory Brewing Company and the consumer complainants identified in ALJ Exhibit Number 1 are hereby consolidated with the Commission’s investigation at docket numbers R-2022-3031672 and R-2022-3031673.
3. That the petitions to intervene filed by the Coalition for Affordable Utility

Services and Energy Efficiency in Pennsylvania, the Commission on Economic Opportunity, Cleveland-Cliffs Steel Company, Exeter Township and the Borough of St. Lawrence, are granted.

1. That the following schedule is adopted for this proceeding:

|  |  |
| --- | --- |
| Non-Company Direct Testimony | July 29, 2022 |
| All parties’ Rebuttal Testimony | August 19, 2022 |
| All parties’ Surrebuttal Testimony | September 1, 2022 |
| Written Rejoinder or Outlines | September 6, 2022 |
| Evidentiary Hearings | September 8-14, 2022 |
| Main Briefs | September 29, 2022 |
| Reply Briefs | October 11, 2022 |

1. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officers. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents so that the documents are received in-hand by the parties and presiding officers no later than 4:30 p.m. on the dates listed. Parties may serve the documents via e-mail to meet this requirement, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
2. That written testimony shall comply with the requirements of 52 Pa.Code § 5.412 and shall be marked with numerical, sequential statement numbers.
3. That all parties shall comply with the provisions of 52 Pa.Code § 5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
4. That the parties shall conduct discovery pursuant to 52 Pa.Code §§ 5.321-5.373, as modified above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. All motions to compel shall contain a certification by counsel setting forth the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain this certification, the parties will be directed to pursue informal discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.
5. That any evidentiary hearing will be held telephonically and will commence at 10:00 a.m. unless changed by the presiding officer.
6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.
7. That any evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: June 30, 2022 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

**R-2022-3031672 (WATER); R-2022-3031673 (WASTEWATER)** - **PENNSYLVANIA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA-AMERICAN WATER COMPANY** *Revised: June 29, 2022*

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