

# Morgan Lewis

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January 25, 2024

## **VIA eFILING**

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

**Re: Pennsylvania Public Utility Commission v.  
Pennsylvania-American Water Company  
Docket Nos. R-2023-3043189 and R-2023-3043190**

Dear Secretary Chiavetta:

Enclosed please find in the above-captioned proceedings, the **Answer of Pennsylvania-American Water Company in Opposition to the Office of Consumer Advocate's Motion to Dismiss Objections and Compel Answer to Interrogatory (Set XXVII)**. The Objections contain confidential information and will be provided to those parties who have executed a confidentiality agreement. A public version will be provided to those parties who have not executed a confidentiality agreement.

As indicated on the enclosed Certificate of Service, copies have been served upon all parties of record. If you have any questions, please do not hesitate to contact me.

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

Very truly yours,



Kenneth M. Kulak

KMK/tp

Enclosures

c: Deputy Chief Administrative Law Judge Christopher P. Pell  
Administrative Law Judge John Coogan  
Per Certificate of Service (w/encls.)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION** : **DOCKET NOS.: R-2023-3043189 (Water)**  
: **R-2023-3043190 (Wastewater)**  
v. :  
**PENNSYLVANIA-AMERICAN WATER COMPANY** :  
:

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a true and correct copy of the **Answer of Pennsylvania-American Water Company in Opposition to the Office of Consumer Advocate’s Motion to Dismiss Objections and Compel Answers to Interrogatories (Set XXVII)** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code Section 1.54:

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Dated: January 25, 2024

*Counsel for  
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\*=executed confidentiality agreement

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	
	:	
v.	:	<b>DOCKET NOS. R-2023-3043189 R-2023-3043190</b>
	:	
<b>PENNSYLVANIA-AMERICAN WATER COMPANY</b>	:	
	:	

**ANSWER OF PENNSYLVANIA-AMERICAN WATER COMPANY IN OPPOSITION  
TO THE OFFICE OF CONSUMER ADVOCATE’S MOTION TO DISMISS  
OBJECTIONS AND COMPEL ANSWER TO INTERROGATORY (SET XXVII)**

Pursuant to 52 Pa. Code § 5.342(g)(1), Pennsylvania-American Water Company (“PAWC” or the “Company”) hereby files this Answer opposing the Office of Consumer Advocate’s (“OCA’s”) Motion to Dismiss Objection and Compel Answer to its Set XXVII Interrogatories (“Set 27”), Question No. 14, subpart (b) (the “Motion”). A copy of PAWC’s Objections is attached to this Answer as Appendix A.<sup>1</sup> For the reasons set forth in the Company’s Objections and in its Answer, below, the OCA’s Motion should be denied and PAWC’s Objections should be sustained.

**I. BACKGROUND**

For more than 25 years, PAWC has been an industry leader in helping resolve the significant challenges faced by small, troubled, and nonviable water and wastewater systems by acquiring those systems and making the improvements needed to assure safe and reliable service. In the last ten years alone, the Company has completed sixteen acquisitions of very small, less-viable water and wastewater systems – systems with less than 1,000 customer connections each.

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<sup>1</sup> PAWC objected to Question No. 14, subparts (b) and (c). The OCA’s Motion only seeks to compel a response to subpart (b).

Over the last few years, the Company has also completed the acquisitions of systems that were not, at the time of acquisition, providing adequate, efficient, safe and reasonable service. These systems, which were acquired pursuant to 66 Pa. C.S. § 529, include Delaware Sewer Company (“Delaware Sewer”) and Winola Water Company (“Winola”). The Company has made capital investments to improve service to customers of these systems and increase environmental compliance. In addition to providing solutions for small, troubled systems, PAWC has also had a positive impact on communities through acquisitions of larger systems, such as in McKeesport, Scranton and York, where significant investment has and continues to address environmental challenges and aging infrastructure.

PAWC and other public utilities must obtain a certificate of public convenience evidencing Pennsylvania Public Utility Commission (“Commission” or “PUC”) approval under 66 Pa.C.S. 1102(a)(3) before acquiring property used and useful in the public service. PUC approval of a Section 1102 application requires a demonstration that a proposed transaction, viewed as a whole, will produce affirmative public benefits.<sup>2</sup> On April 14, 2016 Governor Tom Wolf signed Act 12 of 2016, which added Section 1329 to the Public Utility Code to encourage the consolidation of the highly fragmented water and wastewater systems in the Commonwealth. For these systems, sale to an investor-owned public utility or entity with extensive technical expertise and financial resources can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. Due to the age of many municipal systems, however, traditional depreciated original cost measures produce very low purchase prices, discouraging many transactions. Section 1329 establishes a voluntary fair market valuation process that mitigates the risk that a utility will not be able to fully recover

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<sup>2</sup> See 66 Pa.C.S. § 1103(a); *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1972).



its investment when water or wastewater assets are acquired from a municipality or authority. In a Section 1329 proceeding, the Commission establishes the amount that the acquiring public utility can put into rate base in its next base rate case as a result of the acquisition.

The Commission provides public notice of the Company's applications to acquire water and/or wastewater systems and interested parties, including the OCA, have the opportunity to challenge the proposed transaction in the ensuing proceeding. In fact, the OCA has protested all 12 of PAWC's acquisition applications using the fair market value process since Section 1329 became effective in 2016. Eleven of those Section 1329 acquisition proceedings were resolved by a settlement approved by the PUC, and the OCA was a party to each of those settlements, including the Butler Area Sewer Authority ("BASA") acquisition settlement recently approved by the Commission on November 16, 2023 at Docket No. A-2022-3037047. In addition, the OCA has protested the Company's four most recent acquisitions that did not use the fair market value process authorized by Section 1329 and participated in the Delaware Sewer and Winola acquisition proceedings.

The Company's parent American Water Works, Inc. ("American Water") [**BEGIN CONFIDENTIAL**]

[END

**CONFIDENTIAL]**

As noted in the Motion (pp. 7-8), the Company's claimed revenue requirement for the fully projected future test year includes water and/or wastewater systems to be acquired from the BASA, the Borough of Brentwood, Sadsbury Township Municipal Authority, Farmington Township and Audubon Water Company (the "FPFTY Acquisitions"). The Company has fully supported its claims related to the FPFTY Acquisitions through the voluminous data provided in its November 8, 2023 initial filing. The Company's rate case presentation also demonstrates PAWC's superior management performance based on the factors that apply to water utilities in Section 523 of the Public Utility Code in many areas critically important to assuring safe, reliable and reasonable service, including source water protection and monitoring, extensive system additions and upgrades, and delivering a variety of public benefits through acquisitions.<sup>3</sup>

On January 10, 2024, the OCA served Set 27 on PAWC, which consists of 14 questions. Question 14 ("OCA-27-14") contains eight subparts requesting information about internal audit reports that were provided in the Company's response to the OCA's Interrogatories (Set XXII), Question No. 6. OCA-27-14, subpart (b), as narrowed by the OCA in its Motion, would require the Company to produce documents and information related to **[BEGIN CONFIDENTIAL]**

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<sup>3</sup> See PAWC St. 1, pp. 33-47; PAWC St. 2, pp. 10-15; PAWC St. 3, pp. 13-52; PAWC St. 6, pp. 3-21.

**[END**

**CONFIDENTIAL].**

PAWC objected to OCA-27-14 only to the extent it related to subjects that are not relevant to any matters properly at issue in this rate case. Subparts (b) and (c)<sup>4</sup> probe into matters related to American Water’s evaluation of the review and approval process for acquisitions in Pennsylvania and retrospective analyses of the Company’s completed acquisitions of water and wastewater systems in Pennsylvania that have already been approved by the Commission. None of these topics are related to the examination of PAWC’s existing and proposed base rates in this proceeding within the statutory period specified by 66 Pa.C.S. § 1308(d).

## **II. ARGUMENT**

The OCA broadly asserts that the requested information is needed to develop “ratemaking adjustments” for the FPFTY Acquisitions. There is no need to produce “lessons learned, financial lookback results and acquisition outcomes” for acquisitions previously approved by the Commission to do that. This information is also not relevant to the performance that Section 523 of the Code authorizes the Commission to consider in arriving at a water and wastewater utility’s allowable revenue requirement in a base rate case.<sup>5</sup> The OCA contends that

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<sup>4</sup> As previously noted, PAWC also objected to subpart (c) but was not included in the OCA’s Motion.

<sup>5</sup> Section 523(a) and the portions of 523(b) that are relevant to a water and wastewater utility are set forth below:

(a) Considerations. – The Commission shall consider, in addition to all other relevant evidence of record, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this title. On the basis of the commission’s consideration of such evidence, it shall give effect to this section by making such adjustments to specific components of the utility’s claimed cost

the materials requested in OCA-27-14(b) would be used to determine the “prudence” of PAWC’s management decisions on acquisitions. American Water’s decisions to pursue, review and approve acquisitions in Pennsylvania based on retrospective analyses of completed and PUC-approved transactions have no relevance to PAWC’s “efficiency, effectiveness and adequacy of service.” The OCA has not even alleged that PAWC’s acquisition activity has resulted in inadequate service for its customers.

Rather, it is clear from the Motion that the OCA’s goal is to convert this proceeding from a base rate case into a wholly inappropriate vehicle for relitigating issues related to Section 1329 acquisitions previously approved by the Commission. To that end, the OCA is attempting to use the discovery process to obtain information about American Water’s strategy for pursuing, reviewing and approving acquisitions in Pennsylvania based on retrospective analyses of completed transactions covered by settlements joined by the OCA that, while irrelevant to anything within the proper scope of this proceeding, could be used by the OCA to challenge the Company’s future applications for Commission approval to acquire water and/or wastewater systems using the fair market valuation process authorized by Section 1329.

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of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of the specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.

(b) Fixed Utilities. – As part of its duties pursuant to subsection (a), the commission shall set forth criteria by which it will evaluate future fixed utility performance and in assessing the performance of a fixed utility pursuant to subsection (a), the commission shall consider specifically the following:

(1) Management effectiveness and operating efficiency as measured by an audit pursuant to Section 516 (relating to audits of certain utilities) to the extent that the audit or portions of the audit have been properly introduced with applicable rules of evidence and procedure.

\* \* \*

(5) Action or failure to act to encourage cost-effective conservation by customers of water utilities

\* \* \*

(7) Any other relevant and material evidence of efficiency, effectiveness and adequacy of service.

In its Motion, the OCA attempts to defend its Interrogatory OCA-27-14(b) by emphasizing that matters are discoverable if they “may lead to admissible evidence in the instant proceeding.” While the scope of discovery under the Commission’s regulations is certainly broad,<sup>6</sup> it is not boundless. Matters outside the scope of a proceeding – such as American Water’s internal, confidential and competitively sensitive “lessons learned” from completed Pennsylvania transactions after they have been approved by the Commission – are not “relevant” to the Company’s request for rate relief and, therefore, are not a valid subject for the issuance of discovery.<sup>7</sup> Since these matters are not within the scope of this base rate proceeding, the OCA’s interrogatories will not lead to the discovery of relevant material.

Moreover, in the Company’s 2011 base rate case, the presiding Administrative Law Judge granted the Company’s Objection, and dismissed the OCA’s Motion to Compel, with respect to an OCA interrogatory that would have required the Company to produce information about contemplated future acquisitions or business opportunities.<sup>8</sup> In that case, the OCA sought copies of the minutes of the Boards of Directors of PAWC and American Water. PAWC objected to the production of any of the Board of Directors’ minutes for American Water and to the production of the Board of Directors’ minutes for PAWC unless they were “redacted for information about contemplated future acquisitions/business opportunities, labor negotiations,

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<sup>6</sup> See, e.g., *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 526 A.2d 1243, 1249 (Pa. Commw. Ct. 1987).

<sup>7</sup> See, e.g., *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, Docket No. M-00001353, 2000 Pa. PUC LEXIS 59 at \*7-9 (Order entered Sept. 28, 2000) (affirming the Administrative Law Judge’s decision to reject evidence as “beyond the scope of the proceeding.”); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket Nos. R-00932670, *et al.*, 1994 Pa. PUC LEXIS 120 at \*158 (Order entered July 26, 1994) (“The ALJ concluded as follows: ‘I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .’ ”); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158, 160 (1983) (“The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.”).

<sup>8</sup> *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2011-2232243 *et al.* (Order on Motion to Compel entered July 21, 2011) pp. 21-22.

and litigation/settlement discussion.”<sup>9</sup> The Administrative Law Judge denied the OCA’s Motion to Compel and granted PAWC’s Objection, including PAWC’s Objection to producing its Board of Directors’ minutes unless they were redacted in the manner previously described.

Accordingly, there is clear Company-specific precedent that the information sought in OCA-27-14(b), is not discoverable, in addition to being irrelevant. OCA’s assertion that the enactment of Section 1329 somehow undermined this precedent and made competitively-sensitive information discoverable in a rate case for purposes of Section 523 is clearly wrong, and OCA cites no Commission order or statutory language to support its claim.

### **III. ANSWERS TO THE AVERMENTS IN THE NUMBERED PARAGRAPHS OF THE OCA’S MOTION**

1.-4. Admitted.

5.-6. Denied as stated. PAWC’s Objections, which are attached to the Motion, speak for themselves. By way of further answer, PAWC also objected to OCA-27-14, subpart (c), which seeks information concerning **[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL].**

7. Admitted.

8.-11. It is not necessary to specifically admit or deny averments of law. In further answer, the OCA has not provided an accurate portrayal of controlling legal authority by generally averring that the “relevancy test” should be applied liberally and that information, to be discoverable, need only be “reasonably calculated” to lead to “admissible evidence”. Those broadly-stated rules cannot be invoked to inquire into matters that do not have a reasonable

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<sup>9</sup> *Id.* at 21.

relationship to legitimate issues in this rate case into permissible discovery for the reasons discussed in Sections I and II above, which are incorporated herein by reference as if set forth at length.

12. Denied. It is denied that the OCA's responsibility to protect the interests of PAWC's customers provides a valid basis for the OCA to inquire into American Water's decisions to pursue and approve acquisitions in Pennsylvania. As previously explained in Sections I and II above, the objectionable Set 27 interrogatory requests information that is outside the scope of this proceeding and not reasonably calculated to lead to admissible evidence.

13. It is not necessary to specifically admit or deny averments of law.

14-15. Admitted.

16. Denied as stated. PAWC's Objections, which are attached to the Motion, speak for themselves.

17. Admitted.

18. Denied for the reasons set forth in Sections I and II above and Paragraphs 19-24 below, which are incorporated herein by reference as if set forth at length.

19. Denied. Contrary to the OCA's characterization of the Company's position, PAWC's Objections do not aver that "confidential and proprietary" materials are "precluded from discovery." PAWC's Objections, which are attached to the Motion, speak for themselves.

20. Denied. It is denied that OCA-27-14(b) is "quite distinguishable" from the OCA interrogatory in PAWC's 2011 rate case that would have required the Company to produce information about contemplated future acquisitions or business opportunities. As the OCA concedes in its Motion (p. 7), the materials requested in OCA-27-14(b) are used to assist

American Water in its decisions to pursue and approve future acquisitions and opportunities in Pennsylvania.

21. Denied for the reasons set forth in Sections I and II and the answer to Paragraph No. 20 above, which are incorporated herein by reference as if set forth at length. By way of further answer, the OCA has not explained why information about American Water's retrospective evaluation of its review and approval process for completed PAWC transactions that have been approved by the Commission is necessary to assess the Company's ratemaking claims in this case. This type of information is far outside the bounds of permissible discovery (see 52 Pa. Code § 5.323), has no conceivable relevance to the issues in this case and, to the Company's knowledge, has never been required of a utility in discovery. It should not be permitted here.

22. Denied. The averments of Paragraph 22 are denied to the extent the OCA suggests that PAWC's and American Water's decisions to pursue acquisitions and how to structure the terms, conditions and purchase prices of targeted municipal water and wastewater systems are relevant to PAWC's ratemaking claims in this case or its "efficiency, effectiveness and adequacy of service."

23. Denied in part, admitted in part. It is denied that lessons learned, financial lookbacks and acquisition outcomes for PAWC's completed transactions "directly relates" to the Company's revenue requirement claims in this case for the FPFTY Acquisitions for the reasons for the reasons set forth in Sections I and II and the answer to Paragraph Nos. 20 and 21 above, which are incorporated herein by reference as if set forth at length. By way of further answer, the Commission approved the Company's acquisition of the wastewater assets of BASA by its



Opinion and Order entered on November 16, 2023 at Docket No. A-2022-3037047. The remaining averments of Paragraph No. 23 are admitted

24. Admitted in part, denied in part. It is admitted that the Company requested that the Commission adopt a rate of return in recognition of the Company's superior management performance based on the factors that apply to water utilities in Section 523 of the Public Utility Code. It is further admitted that the Company believes its management performance claim is supported by its efforts to acquire troubled water and wastewater systems in furtherance of the Commission's policy statement at 52 Pa. Code § 69.711. It is denied that the fact that PAWC proposes that the Commission implement the terms of Section 523 in determining the Company's allowed rate of return on equity in this case gives the OCA free reign to request any and all information related to PAWC's acquisitions. Section 523 of the Public Utility Code provides that the Commission "shall consider" the "efficiency, effectiveness and adequacy of service" of a utility when determining just and reasonable rates. The materials requested by the OCA that would reveal internal assessments of PAWC's acquisitions to inform American Water's approach to pursuing future business opportunities in Pennsylvania do not have any reasonable relationship to "efficiency, effectiveness and adequacy of service".

25. Admitted.

WHEREFORE, for the foregoing reasons, the OCA's Motion should be denied, the Objections of Pennsylvania-American Water Company to OCA's Interrogatories (Set XXVII) Question No. 14, subpart b. should be sustained, and the ALJs should issue an Order directing that the Company is not required to furnish an answer to those Interrogatories.

Respectfully submitted,



---

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Teresa Harrold (PA I.D. No. 311082)  
Erin K. Fure (PA I.D. No. 312245)  
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Dated: January 25, 2024

*Counsel for  
Pennsylvania-American Water Company*

## **APPENDIX A**

PAWC OBJECTIONS TO OCA INTERROGATORIES (SET XXVII)

# Morgan Lewis

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January 16, 2024

## VIA eFILING

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

**Re: Pennsylvania Public Utility Commission v.  
Pennsylvania-American Water Company  
Docket Nos. R-2023-3043189 and R-2023-3043190**

Dear Secretary Chiavetta:

Enclosed please find, in the above-captioned proceeding, the **Certificate of Service** evidencing service upon the parties of record of the **Objections of Pennsylvania-American Water Company to the Interrogatories (Set XXVII) of the Office of Consumer Advocate (“Objections”)**. The Objections contain confidential information and will be provided to those parties who have executed a confidentiality agreement. A public version will be provided to those parties who have not executed a confidentiality agreement.

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

Very truly yours,



Kenneth M. Kulak

KMK/ap  
Enclosures

c: Per Certificate of Service (w/encls.)

DB1/ 143654351.1

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# Morgan Lewis

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January 16, 2024

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**Re: Pennsylvania Public Utility Commission v.  
Pennsylvania-American Water Company  
Docket Nos. R-2023-3043189 and R-2023-3043190**

Dear Counsel:

Enclosed please find in the above-referenced matters, the **Objections of Pennsylvania-American Water Company to the Interrogatories (Set XXVII) of the Office of Consumer Advocate (Confidential)**. A public version will be provided to those parties who have not executed a confidentiality agreement.

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

Very truly yours,



Kenneth M. Kulak



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	<b>:</b>	<b>DOCKET NOS.: R-2023-3043189 (Water)</b>
	<b>:</b>	<b>R-2023-3043190 (Wastewater)</b>
<b>v.</b>	<b>:</b>	
<b>PENNSYLVANIA-AMERICAN WATER COMPANY</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a true and correct copy of the **Objections of Pennsylvania-American Water Company to the Interrogatories (Set XXVII) of the Office of Consumer Advocate** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code Section 1.54:

**VIA ELECTRONIC MAIL**

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Dated: January 16, 2024

*Counsel for  
Pennsylvania-American Water Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	
	:	
	:	<b>DOCKET NOS. R-2023-3043189</b>
v.	:	<b>R-2023-3043190</b>
	:	
<b>PENNSYLVANIA-AMERICAN WATER COMPANY</b>	:	
	:	

**OBJECTIONS OF PENNSYLVANIA-AMERICAN WATER COMPANY  
TO THE CONFIDENTIAL INTERROGATORIES (SET XXVII)  
OF THE OFFICE OF CONSUMER ADVOCATE**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Pennsylvania-American Water Company (“PAWC” or the “Company”) hereby objects to the Twenty-Seventh Set of Interrogatories (“Set XXVII”), No. 14, subparts (b) and (c), propounded by the Office of Consumer Advocate (“OCA”) on January 10, 2024. A copy of the OCA’s Set XXVII Interrogatories is attached to these Objections as Appendix A.

**I. RELEVANT BACKGROUND**

1. On November 8, 2023, the Company filed Supplement No. 45 to Tariff Water – Pa. P.U.C. No. 5 (“Water Tariff Supplement”) and Supplement No. 47 to Tariff Wastewater – Pa. P.U.C. No. 16 (“Wastewater Tariff Supplement”), requesting an increase in its total annual operating revenues to become effective January 7, 2024. The amount of the requested increase equals \$203.9 million above the level of pro forma revenues for the fully projected future test year (“FPFTY”) ending June 30, 2025. The Company’s filing included the detailed supporting data required by the Pennsylvania Public Utility Commission’s (“Commission’s”) regulations at 52 Pa. Code §§ 53.52 et seq.

2. To date, the OCA has served on the Company 27 sets of interrogatories comprising a cumulative total of 591 questions with 1,327 subparts.

3. As previously noted, on January 10, 2023, the OCA issued its Set XXVII interrogatories containing Question No. 14, subparts (b) and (c), to which PAWC hereby objects because those inquiries seek information that is not relevant to any matters properly at issue in this base rate proceeding and/or that is protected from disclosure by the attorney-client privilege and work product doctrine.

## II. OBJECTIONS

4. Section 333(d) of the Public Utility Code states, in pertinent part, as follows:

**Interrogatories.** – Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering *relevant, unprivileged* information.

66 Pa.C.S. § 333(d) (emphasis added)

5. The Commission’s regulations at 52 Pa. Code § 5.321(c) define the permissible scope of discovery in proceedings before the Commission as follows:

*Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

6. OCA Interrogatory (Set XXVII) No. 14, subparts (b) and (c), states as follows:

**[BEGIN CONFIDENTIAL]** [REDACTED]

c) [REDACTED]

**[END CONFIDENTIAL]**

7. PAWC objects to Interrogatory (Set XXVII) No. 14, subpart b, because

**[BEGIN CONFIDENTIAL]** [REDACTED]

**[END CONFIDENTIAL]**. These

documents are confidential and proprietary, were not used for any purpose in developing the Company's claims in this rate case, and are not reasonably related to matters addressed in this proceeding. PAWC has fully supported its claims related to water and wastewater system acquisitions in this proceeding. Therefore, the OCA's inquiry is outside the permissible bounds of discovery set forth in 66 Pa. C.S. §333(d) and constitutes the kind of broad and unfocused "fishing expedition" that this Commission and the Pennsylvania trial and appellate courts have rejected as an impermissible form of discovery.

8. Moreover, in the Company's 2011 base rate case, the presiding Administrative Law Judge granted the Company's Objection, and dismissed the OCA's Motion to Compel, with respect to an OCA interrogatory that would have required the Company to produce information about contemplated future acquisitions or business

opportunities.<sup>1</sup> In that case, the OCA sought copies of the minutes of the Boards of Directors of PAWC and American Water. PAWC objected to the production of any of the Board of Directors' minutes for American Water and to the production of the Board of Directors' minutes for PAWC unless they were "redacted for information about contemplated future acquisitions/business opportunities, labor negotiations, and litigation/settlement discussion."<sup>2</sup> The Administrative Law Judge denied the OCA's Motion to Compel and granted PAWC's Objection, including PAWC's Objection to producing its Board of Directors' minutes unless they were redacted in the manner previously described. Accordingly, there is clear Company-specific precedent that the information sought in OCA Interrogatory (Set XXVII) No. 14, subpart (b), is not discoverable, in addition to being irrelevant for the reasons set forth in Paragraph No. 7 above.

9. PAWC objects to Interrogatory (Set XXVII) No. 14, subpart (c) requesting information **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**. PAWC also objects to Interrogatory (Set XXVII) No. 14, subpart (c) to the extent the interrogatory requests information that would be subject to the attorney-client privilege, the attorney work-product privilege or would require the Company to divulge its or its attorneys' mental impressions, analyses, or assessments of the merits respecting issues, claims, defenses or any other aspect of the

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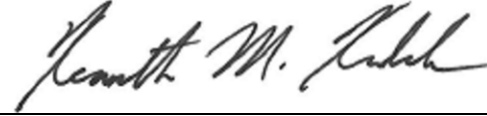
<sup>1</sup> *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2011-2232243 et al. (Order on Motion to Compel entered July 21, 2011) pp. 21-22.

<sup>2</sup> *Id.* at 21.

matters as to which legal representation was provided. Pursuant to the Commission's regulations at 52 Pa. Code § 5.361(a)(3), such information is not discoverable.

WHEREFORE, for the foregoing reasons, PAWC's Objections to the OCA's Interrogatories (Set XXVII), No. 14, subparts (b) and (c) should be granted.

Respectfully submitted,



---

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Dated: January 16, 2024

*Counsel for*  
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## Appendix A

COMMONWEALTH OF PENNSYLVANIA



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January 10, 2024

**Via Electronic Mail Only**

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Re: Pennsylvania Public Utility Commission  
v.  
Pennsylvania-American Water Company  
Docket Nos. R-2023-3043189 (Water)  
R-2023-3043190 (Wastewater)

Dear Counsel:

Enclosed you will find Interrogatories of the Office of Consumer Advocate, Set 27, in this matter. This document contains some **CONFIDENTIAL** information that is only being provided to Pennsylvania-American Water Company. Other parties will receive only the non-confidential (public) portion of OCA Set 27 but parties to the Protective Agreement will have access to the full set of questions and responses, including confidential material, when those are posted in the Company's data room.

In accordance with the discovery modifications ordered at the Prehearing Conference held on January 3, 2024, we request Pennsylvania-American Water Company provide verified answers to these inquiries within ten (10) days of service. Also, please forward the verified answers as they are completed, rather than waiting until the responses to the full set are completed.

We would appreciate it if you would communicate any objections you may have to these interrogatories as soon as possible.

Kenneth M. Kulak, Esquire  
Brooke E. McGlinn, Esquire  
Catherine Vasudevan, Esquire  
Mark A. Lazaroff, Esquire  
January 10, 2024  
Page 2

We also request that you send a copy of the answers directly to our group e-mail, as listed below:

OCAPAWC2023@paoca.org

If you have any questions, please call us. By copy of this letter, copies of these interrogatories have been served upon all parties. A certificate of service showing service of these interrogatories on all parties has been filed with Secretary Chiavetta of the Pennsylvania Public Utility Commission as required by 52 Pa. Code §5.341(b).

Sincerely,



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Enclosures:

cc: PUC Secretary Rosemary Chiavetta (Letter and Certificate of Service Only)  
Certificate of Service

4868-2143-2986

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :  
 : Docket Nos. R-2023-3043189 (Water)  
 v. : R-2023-3043190 (Wastewater)  
 :  
 Pennsylvania-American Water Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Interrogatories to Pennsylvania-American Water Company, Set 27, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission’s electronic filing system.

Dated this 10th day of January, 2024.

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Dated: January 10, 2024

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2023-3043189 (Water)
v.	:	R-2023-3043190 (Wastewater)
	:	
Pennsylvania-American Water Company	:	

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INTERROGATORIES  
OF THE  
OFFICE OF CONSUMER ADVOCATE  
SET 27

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Pursuant to 52 Pa. Code § 5.341, the Office of Consumer Advocate hereby propounds the following Interrogatories to Pennsylvania-American Water Company (PAWC) to be answered by those officers, employees, agents, or contractors who have knowledge of the requested facts and who are authorized to answer on behalf of the Company. Each interrogatory is to be verified by the responding witness in accordance with 52 Pa. Code § 5.342(a)(6).

DATED: January 10, 2024

## Instructions

- 1) These interrogatories shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.
- 2) Restate the interrogatory immediately preceding each response.
- 3) Identify the name, title, and business address of each person(s) providing each response.
- 4) Provide the date on which the response was created.
- 5) Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term “Pennsylvania-American Water Company”, “Pennsylvania-American”, “PAWC”, “the Company”, or “you” as used herein includes Pennsylvania-American Water Company, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Company has the right to compel the action requested herein.
- 6) Provide a verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness’ knowledge, information and belief.
- 7) As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word “document” or “workpaper” includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium, including computerized memory, magnetic, electronic, or optical media, regardless of origin, and whether or not including additional writing thereon or attached thereto, and may consist of:
  - a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
  - b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
  - c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.



Pa. P.U.C. v. Pennsylvania-American Water Company  
Docket Nos. R-2023-3043189 (Water)  
R-2023-3043190 (Wastewater)  
Interrogatories of the Office of Consumer Advocate to PAWC  
Set 27 **PUBLIC**

1. Impact of Management Audit Recommendations being implemented by PAWC. Refer to the Management and Operations Audit (“MOA”) in Docket No. D-2022-3035217 and to PAWC’s responses to OCA 22-001 and OCA 22-002.
  - a) Other than for PAWC’s agreement to remove costs for the external PAWC board of directors, please confirm that there are no other cost savings from the MOA in the FTY or FPFTY. If this cannot be confirmed explain fully why not.
  - b) Has PAWC included any costs to implement the MOA recommendations in the FTY or FPFTY? If not, explain fully why not. If so, please identify those costs by amount and account, separately for the FTY and FPFTY.
  - c) Please responsively answer the specific requests that are contained in OCA 22-002 parts a through d, without referencing the responses to OCA 22-001.
  
2. Unaccounted for water. Refer to the MOA and to the Company’s response to OCA 22-007.
  - a) What quantity of unaccounted for water did PAWC have in the HTY? Identify the quantity and show in detail how it was determined.
  - b) What is the total quantity of water sold that PAWC used for the HTY?
  - c) What is the total quantity of treated water that PAWC used for the HTY?
  - d) Is the difference between the quantity of water sold and treated water identified by PAWC as unaccounted for water? If not, explain fully why not, and identify, quantify and explain what else is used by PAWC to identify quantities of unaccounted for water, and show each of those quantities for the HTY.
  - e) What costs did PAWC incur in the HTY to treat water that was sold in the HTY? Show the amounts of such costs, by account, and explain how they were determined.
  - f) What costs did PAWC incur in the HTY to treat water that was not delivered? Show the amounts and how they were determined.
  - g) What costs did PAWC incur in the HTY to pump water that was sold in the HTY? Show the amounts of such costs, by account, and explain how they were determined.
  - h) What costs did PAWC incur in the HTY to pump water that was not delivered? Show the amounts and how they were determined.

Pa. P.U.C. v. Pennsylvania-American Water Company  
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Interrogatories of the Office of Consumer Advocate to PAWC  
Set 27 **PUBLIC**

- i) What unaccounted for water quantify has PAWC budgeted, forecasted, estimated, and/or calculated for the FTY? Identify the quantity and show in detail how it was determined.
  - j) What is the total quantity of water sold that PAWC used for the FTY?
  - k) What is the total quantity of treated water that PAWC used for the FTY?
  - l) What is the total quantity of water sold that PAWC used for the FPFTY?
  - m) What is the total quantity of treated water that PAWC used for the FPFTY?
  - n) What unaccounted for water quantify has PAWC budgeted, forecasted, estimated, and/or calculated for the FPFTY? Identify the quantity and show in detail how it was determined.
  - o) What was PAWC's percentage of unaccounted for water for the HTY? Identify the percentage and show the quantities of unaccounted for water and total water that were used to derive that percentage. Include supporting calculations.
  - p) Has PAWC assumed that the percentage of unaccounted for water in the FTY is the same as the quantity of unaccounted for water that PAWC experienced during the HTY? If not, explain in detail. If so, what is the basis for that assumption.
  - q) Has PAWC assumed that the percentage of unaccounted for water in the FPFTY is the same as the quantity of unaccounted for water that PAWC experienced during the HTY? If not, explain in detail. If so, what is the basis for that assumption.
3. Refer to the Company's response to OCA 22-008.
- a) Identify the costs for the UFW reduction efforts that were undertaken by PAWC in 2023.
  - b) Does PAWC consider any of the costs identified in response to part a to be "one-time items"? If so, please explain fully and identify the amounts.
  - c) Identify the budgeted, projected, and forecast costs for the UFW reduction efforts that are being undertaken by PAWC in 2024. Show the amounts by account and explain in detail how they were derived.
  - d) Identify the budgeted, projected, and forecast costs for the UFW reduction efforts that are being undertaken by PAWC in the FTY. Show the amounts by account and explain in detail how they were derived.

Pa. P.U.C. v. Pennsylvania-American Water Company  
Docket Nos. R-2023-3043189 (Water)  
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Set 27 **PUBLIC**

- e) Identify the budgeted, projected, and forecast costs for the UFW reduction efforts that are being undertaken by PAWC in the FPFTY. Show the amounts by account and explain in detail how they were derived.
  - f) What costs has PAWC budgeted, projected and forecast for the robust UFW training program in the FTY and, separately, in the FPFTY? Show the amounts by account and explain in detail how they were derived.
  - g) Explain fully and in detail whether and why PAWC would consider a reduction in UFW below 20% to be “one-time savings.”
  - h) Would a reduction of UFW below 20% in the FTY result in reducing any costs? If not, explain fully why not. If so, identify the costs that would be reduced.
  - i) Would a reduction of UFW below 20% in the FPFTY result in reducing any costs? If not, explain fully why not. If so, identify the costs that would be reduced.
4. Refer to the Company’s response to OCA 22-008. In computing unaccounted for water (UFW) show in detail and explain fully how the Company defines and treats each of the following:
- a) Unmetered water
  - b) Unbilled water
  - c) Leaked water losses
5. What specific plant additions has PAWC reflected in the HTY, FTY and FPFTY for lead service line replacements? Identify each PAWC lead service line project in each period and show the related amounts of utility plant addition by plant account.

**QUESTIONS ADDRESSING INFORMATION DESIGNATED BY PAWC AS  
CONFIDENTIAL BEGIN ON PAGE 4**

## VERIFICATION

I, Ann M. Weaver, hereby declare that I am the Senior Director CFO of Operations for American Water Works Service Company, Inc.; that I am authorized to make this verification on behalf of Pennsylvania-American Water Company; that the facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

Date: January 25, 2024



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Ann M. Weaver