

March 26, 2024

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Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Pa. Public Utility Commission, et al. v. Pennsylvania American Water Company
Docket Nos. R-2023-3043189 and R-2023-3043190

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief of Victory Brewing Company with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

cc: Hon. Christopher P. Pell (cpell@pa.gov)
Hon. John M. Coogan (jcoogan@pa.gov)
Certificate of Service (with Enclosures)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Victory Brewing's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: March 26, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF
VICTORY BREWING COMPANY**

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I. INTRODUCTION AND OVERVIEW

A. Description of the Party Submitting Brief

Victory Brewing Company (“VBC” or “Victory Brewing”) is a large industrial customer that receives water and wastewater services from Pennsylvania American Water Company (“PAWC” or “Company”) in Rate Zone 1 and the Coatesville District. Victory Brewing is also subject to payment of Pollutant Removal Costs under PAWC’s wastewater tariff.

B. Procedural History

On November 8, 2023, PAWC filed Supplement No. 45 to Tariff Water-PA P.U.C. No. 5 (“Supplement No. 45”) with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to become effective January 7, 2024. Supplement No. 45 proposes to increase PAWC’s total annual operating revenues for water service by approximately \$199.2 million, or 24.2%. On the same date, PAWC filed Supplement No. 47 to Tariff Wastewater PA P.U.C. No. 16 (“Supplement No. 47”) to become effective January 7, 2024. Supplement No. 47 proposes to increase PAWC’s total operating revenues for wastewater service by approximately \$4.7 million, or 2.5%.

By Orders entered on December 21, 2023, the Commission suspended the rate increases proposed by Supplement Nos. 45 and 47 for further investigation until August 7, 2024 unless permitted by Commission Order to become effective at an earlier date. At the same Public Meeting, Chairman Stephen M. DeFrank and Commissioner Ralph V. Yanora issued a Joint Statement regarding the investigation of the filings. In the Joint Statement, Chairman DeFrank and Commissioner Yanora observed, *inter alia*, the frequency of PAWC’s rate case filings,

specifically noting the PUC’s approval of a rate increase in the amount of \$138.0 million approximately one year earlier on December 8, 2022.¹

A prehearing conference convened on January 3, 2024, at which time a variety of procedural issues were addressed by the presiding officers, Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge John M. Coogan (collectively, the “ALJs”), and counsel for the parties who had entered appearances or filed petitions to intervene at that time. On January 5, 2024, the ALJs issued Prehearing Order # 1 memorializing the procedural schedule, granting several interventions, establishing a service list and approving a series of discovery modifications.

Prehearing Order #1 further provided that going forward, petitions to intervene, if not defective on their face, shall be deemed granted if not objected to within three business days after filing. VBC filed a Petition to Intervene on January 8, 2024. No objections were filed, and Victory Brewing has participated in the proceeding as an intervenor.

Following the submission of testimony by various parties, telephonic evidentiary hearings convened on March 7, 2024 and March 8, 2024. Although VBC did not submit written testimony, Victory Brewing attended both days of the evidentiary hearings.

On March 11, 2024, the ALJs issued an Order on Briefs and Closing of the Record (“Briefing Order”). The Briefing Order required the use of common outline, as well as completion of Excel tables provided by email on January 16, 2024. VBC is following the common outline established by the parties. However, since Victory Brewing is not taking a position on the overall amount of rate relief, no Excel tables are attached to this Main Brief.

¹ *Pa. Pub. Util. Comm’n, et al. v. Pennsylvania American Water Company*, Docket Nos. R-2022-3031672, *et al.* (Order entered December 8, 2022).

C. Overview of PAWC's Filing

PAWC has proposed an overall rate increase in the amount of approximately \$203.9 million, or 20.2%, which would take effect approximately nine months after its most recent rate increase of approximately \$138 million.² These increases would result in a 10.95% return on equity and overall rates of return of 8.22% for water operations and 7.94% for wastewater operations.³ In addition, PAWC proposes two alternative ratemaking mechanisms, including: (a) a Revenue Decoupling Mechanism (“RDM”) that would guarantee that PAWC meets its revenue targets by allowing the Company to adjust rates between base rate cases without Commission review or approval; and (b) an Environmental Compliance Investment Charge (“ECIC”) to recover the capital costs and expenses incurred to address and comply with new or changed federal or state environmental mandates for projects that are not eligible for recovery under the existing Distribution System Improvement Charge (“DSIC”).⁴ Further, PAWC is proposing deferred accounting treatment for several expenses, including pension and OPEB expenses, and production costs that change between rate cases.⁵ Finally, PAWC has included six acquisitions in its rate base, some of which are pending approval before the Commission and Commonwealth Court.⁶

D. Legal Standards (Burden of Proof)

As the party requesting the rate increase, PAWC has the burden of proving that its proposed rates are just and reasonable.⁷ This burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, which remains with the public utility throughout

² OCA St. 1 at 6.

³ OCA St. 1 at 9.

⁴ OCA St. 1 at 9.

⁵ OCA St. 1 at 9-10.

⁶ OCA St. 1 at 10.

⁷ 66 Pa.C.S. § 315(a). *Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa. Commw. 1990)(citation omitted). *See also, Pa. Pub. Util. Comm'n v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

the course of the rate proceeding.⁸ The public utility must satisfy its burden of proof by a preponderance of the evidence, which “means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.”⁹ However, a party proposing an adjustment to a ratemaking claim bears the burden of going forward with evidence to respond to the reasonableness of its proposed rates.¹⁰

PAWC’s rates must meet the constitutional and statutory standard of being “just and reasonable.”¹¹ Section 1301 of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.”¹² The Commission must set the rate *within* the zone of reasonableness to be “just and reasonable.”¹³

⁸ *PUC v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098, et al., Opinion and Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 19, 2016 Pa. PUC LEXIS 62.

⁹ *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at *29 (Pa. Commw. Ct. June 2, 2020) (citing *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm'n*, 995 A.2d 465, 478 (Pa. Commw. 2010)).

¹⁰ *See, e.g., Pa. Pub. Util. Comm'n v. PECO*, Docket No. R-891364, et al., Opinion and Order entered May 16, 1990, 1990 Pa. PUC LEXIS 155; *Pa. Pub. Util. Comm'n v. Breezewood Telephone Company*, Docket No. R-901666, Opinion and Order entered January 31, 1991, 1991 Pa. PUC LEXIS 45.

¹¹ 40 Pa.B. at 2672; 52 Pa. Code § 69.2702(b). *PUC v. PGW*, Docket No. R-00006042 (Order entered October 4, 2001, at 25) (“*PGW 2001 Base Rate Order*”), affirmed by, *City of Philadelphia v. Pa. Pub. Util. Comm'n*, 829 A.2d 1241 (Pa. Commw. 2003) (The “just and reasonable” standard in Section 1301 is coextensive with the federal constitutional standard for determining utility rates).

¹² 66 Pa.C.S. § 1301.

¹³ *See FPC v. Conway*, 426 U.S. 271, 278 (1976) (“there is no single cost-recovering rate, but a zone of reasonableness”).

II. SUMMARY OF ARGUMENT

Victory Brewing Company respectfully urges the Commission to carefully consider the evidence submitted by the Office of Consumer Advocate (“OCA”) and the Bureau of Investigation and Enforcement (“I&E”), as well as other parties, regarding the amount of the proposed rate increase and to moderate that amount consistent with the public interest. Particularly since the implementation of this rate increase will occur approximately nine months following the effective date of the most recent increase, it is critical for the PUC to take into consideration that evidence in determining what the appropriate, or a just and reasonable, amount should be. VBC specifically supports the opponents’ concerns regarding the various alternative ratemaking mechanisms that, on top of an already hefty rate increase proposal, are effectively seeking to shield the Company and its shareholders from any risk between base rate cases.

With respect to the Company’s proposed cost of service study and its revenue allocation proposal, VBC does not have any concerns and believes that PAWC has provided substantial evidence in support of those proposals. As to the proposed rate design, Victory Brewing is supportive of the measures advanced by the witness for Cleveland-Cliffs Steel (“Cleveland Cliffs”), which would result in higher customer charges and correspondingly lower volumetric charges for industrial customers.

III. OVERALL POSITION ON RATE INCREASE

Victory Brewing Company does not have an overall position on the rate increase but rather defers to the other parties, including OCA and I&E, who have submitted evidence supporting lower revenue requirements.

IV. RATE BASE

VBC takes no specific position on PAWC's rate base.

V. REVENUES

VBC takes no specific position on PAWC's revenues.

VI. EXPENSES

VBC takes no specific position on PAWC's expenses.

VII. TAXES

VBC takes no specific position on PAWC's treatment of taxes.

VIII. RATE OF RETURN

VBC takes no specific position on rate of return.

IX. RATE STRUCTURE AND RATE DESIGN

A. Cost of Service Studies

When a utility files for a rate increase and the proposed increase exceeds \$1 million, the utility must include with its filing an allocated class cost-of-service study ("COSS") in which it assigns to each customer class a portion of the proposed rate increase, based upon operating costs that it incurred in providing that service.¹⁴ While cost of service studies are the touchstone for reasonable allocations of revenue responsibility among rate classes,¹⁵ the Commission has often stated that cost of service and revenue allocation analyses require a considerable amount of judgment

¹⁴ 52 Pa. Code § 53.53.

¹⁵ *Lloyd v. Pa. PUC*, 904 A.2d. 1019-21 (Pa. Cmwlth. 2006).

and are more of an accounting/engineering art rather than science.¹⁶ For that reason, Pennsylvania appellate courts have repeatedly held that the Commission, in crafting a reasonable rate structure, is “invested with a flexible limit of judgment” and may establish just, reasonable and non-discriminatory rates within a “range of reasonableness.”¹⁷

PAWC presented the testimony of Constance E. Heppenstall from Gannett Fleming Valuation and Rate Consultants, LLC,¹⁸ who sponsored the Company’s COSS.¹⁹ For Exhibit No. 12-A, Ms. Heppenstall used the base-extra capacity method to allocate costs of water operations. As explained by Ms. Heppenstall, the base-extra capacity method described in her exhibit has been accepted by the Commission for use by the Company and other water utilities in the Commonwealth.²⁰ For wastewater service, Ms. Heppenstall used the functional cost allocation methodology, which has likewise been approved by the Commission for use by the Company and other wastewater utilities. Given the prior accepted use of the studies relied upon by PAWC witness Heppenstall, Victory Brewing has not challenged these methods and accepts the results.

B. Revenue Allocation

The purpose of revenue allocation is to establish the responsibility of each customer class for a portion of the revenue requirements that are approved by the Commission. A key factor in determining the appropriate portion of the revenue requirements that is allocated to each class is the CCOSS.²¹ In proposing its revenue allocation, the Company’s primary goal was to allocate the increase to each class in a way that moves the various rate classes closer to their full cost of service while avoiding applying an unreasonably large portion of the increases to any one of the customer classes. In addition, PAWC sought to recognize the principle of gradualism in proposing increases

¹⁶ *Application of Metropolitan Edison Co.*, Docket No. R-00974008 (Order entered June 30, 1998); *Pa. PUC v. Pennsylvania Power & Light Co.*, 1983 Pa. PUC Lexis 22.

¹⁷ *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 865, 874 (Pa. Commw. Ct. 1978).

¹⁸ PAWC St. No. 12.

¹⁹ PAWC Exh. 12-A through 12-E.

²⁰ Cleveland-Cliffs St. 1 at 2.

²¹ *Lloyd*, 904 A.2d at 1019-21.

for some classes despite the costs incurred to serve those classes.²² Given that the Company's revenue allocation goals were consistently applied in accordance with prior rate cases, Victory Brewing does not contest the results of costs being allocated to certain customer classes.

C. Tariff Structure

PAWC presented its proposed rate design in the direct testimony of Charles Rea.²³ In critiquing PAWC's proposed rate design, witness Richard A. Baudino for Cleveland-Cliffs recommended higher customer charges and lower volumetric charges for large industrial customers.²⁴ Victory Brewing agrees with this approach as it allows a customer to reduce their bills through conservation, when possible. This outcome is consistent with prior rulings of the PUC. For instance, the Commission has recognized that it is appropriate to set a customer charge that ensures the recovery of fixed costs that are "clearly more customer-related than usage-related, while still allowing some revenue to be recovered through usage-based charges."²⁵

D. Summary (Including Scale Back of Rates)

In the event that the Commission approves a revenue requirement that is less than the Company's request, PAWC argued that the proposed water rates, wastewater rates, and reallocation from wastewater to water under Act 11, should all be scaled back proportionally so that the same relative percentages be maintained.²⁶ Victory Brewing accepts scale back proposal presented by PAWC.

X. ALTERNATIVE RATEMAKING REQUESTS

A. Revenue Decoupling Mechanism ("RDM")

²² PAWC St. No. 10 at 49-50.

²³ PAWC St. No. 10.

²⁴ Cleveland-Cliffs St. No. 1 at 13-14.

²⁵ *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597, 2012 Pa. PUC LEXIS 1757 (October 19, 2010 R.D.; Order entered December 28, 2012) (rejecting I&E's and OCA's position of "no increase" to the customer charge because it was not based on a proper cost analysis) citing *Pa. Publ. Util. Comm'n v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 2004 Pa. PUC LEXIS 39, 236 P.U.R.4th 218 (August 5, 2004).

²⁶ PAWC St. No. 10 at 45-46.

As part of its filing, the Company has proposed to implement an RDM which will allow it guaranteed recovery of its authorized revenue requirement and fixed costs. This mechanism would allow PAWC to compare actual revenue and fixed costs. In summary, if revenues are higher than would have been collected under the RDM formula, the difference will be credited to customers; likewise, if revenues are lower than under the RDM formula, customers will be charged for the difference.

OCA witness Christine Maloni Hoover opposed the RDM proposal, and pointed out the many proposals PAWC has set forth to guarantee recovery of all costs between rate cases which would effectively shift all risk of recovery away from the Company and wholly onto ratepayers.²⁷ The RDM would not “*enhance* the safety, security, reliability or availability of utility infrastructure” as required by Section 1330(a)(2), and also sends inaccurate price signals to customers.²⁸

Similarly, Cleveland-Cliff witness Baudino noted that the PUC has already approved the Company’s DSIC, a mechanism designed to provide accelerated cost recovery to PAWC for certain system improvements, which he explained “will continue to be an important ongoing source of additional revenue collection outside of traditional rate case proceedings for PAWC.”²⁹ If the Commission approves the RDM, Mr. Baudino advocated for exclusion of the Industrial class, noting that the Company only provided analysis of conservation-related revenue losses from the Residential, Commercial and Public classes. As he testified, no evidence was presented to show that the Industrial class is affected by conservation measures, weather, or declining numbers of customers.³⁰

²⁷ OCA St. 1 at 44-48.

²⁸ *Id.* at 46; 47-48.

²⁹ Cleveland-Cliffs St. 1 at 15.

³⁰ Cleveland-Cliffs St. 1 at 16-18.

Likewise, testifying for the Pennsylvania-American Water Large Users Group (“PAWLUG”), Ms. Billie S. LaConte opposed the proposed RDM. Describing straight-fixed variable method as a form of revenue decoupling, Ms. LaConte explained that PAWC proposes to adjust the ADM annually, creating a new burden for PAWC’s customers.³¹ She further pointed to the interclass cost shifting that would occur among various non-residential customer classes, concluding that this “is not a reasonable outcome.”³²

On behalf of I&E, Mr. Ethan Cline also opposed the RDM, testifying that the mechanism would do nothing more than provide additional revenue stability for the Company. As Mr. Cline explained, revenue stability “is not sufficient support to base monthly or annual goal revenues on rate components that are not consistent with cost-causation principles [and] has the potential to reduce incentives to use utility service efficiently.”³³ In sum, Mr. Cline testified that this mechanism “strays too far from the concerns of affordability and conservation in the name of revenue stability for the Company.”³⁴

Victory Brewing agrees with the witnesses who testified for I&E, OCA, Cleveland-Cliffs and the PAWLUG that the RDM should be rejected. If the proposal is accepted, Victory Brewing agrees with the recommendation proffered by Mr. Baudino to exclude the Industrial class.

B. Environmental Compliance Investment Charge (“ECIC”)

Similar to the RDM, the Company has proposed the ECIC to allow it to recover, between rate cases, any capital costs and expenses to comply with federal and state environmental mandates. OCA also opposed the ECIC, which again proposes to shift the risk of recovery for a

³¹ PAWLUG St. 1 at 11-12.

³² PAWLUG St. 1 at 12-13.

³³ I&E St. 4 at 13-14.

³⁴ I&E St. 4 at 14.

wide range of capital investments and other costs fully onto customers. As OCA witness Hoover pointed out, compliance with environmental laws is an integral part of the Company's obligation to provide adequate, safe and reasonable service and facilities under Section 1501 of the Public Utility Code, and PAWC has been more than able to meet the Section 1501 requirements without an ECIC in place.³⁵

Testifying for I&E, Vanessa Okum explained that because the proposed ECIC would be filed outside the parameters of a base rate case, the PUC would not have the ability to review the data in the context of total impact to ratepayers and with respect to other expenses that may be increasing or decreasing between rate cases. Ms. Okum also pointed out that the Company may be able to achieve compliance without increasing costs by implementing other savings measures. Finally, witness Okum noted that "it is difficult to adequately evaluate the impact of a such a charge the Company has not provided any measurable data associated with the charge."³⁶

On behalf of PAWLUG, Ms. LaConte pointed out that although PAWC claimed that the proposed ECIC has become commonplace in utility regulation, none of the water utilities in its proxy group have such a mechanism. Witness LaConte further explained that PAWC has not incurred or included any pending environmental costs that would apply to the ECIC, meaning that the cost projections are based on speculative estimates.³⁷

Victory Brewing agrees with the other parties' testimony regarding the ECIC and asserts that the ECIC should be rejected.

XI. LOW-INCOME CUSTOMER ASSISTANCE

VBC takes no position on PAWC's low-income customer assistance programs.

³⁵ OCA St. 1 at 48-51.

³⁶ I&E St. 1 at 34-35.

³⁷ PAWLUG St. 1 at 16.

XII. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES

VBC takes no position on PAWC's service quality and customer service issues.

XIII. MISCELLANEOUS

VBC has no miscellaneous issues to raise.

XIV. CONCLUSION

Victory Brewing Company respectfully requests that adopt the recommendations discussed herein regarding PAWC's proposed rate increase.

Respectfully submitted,

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Dated: March 26, 2024

Appendix A

Appendix A

Proposed Findings of Fact

1. Victory Brewing Company (“Victory Brewing” or “VBC”) is a large industrial customer that receives water and wastewater services from Pennsylvania American Water Company (“PAWC” or “Company”) in Rate Zone 1 and the Coatesville District.
2. PAWC proposes an overall rate increase in the amount of approximately \$203.9 million, or 20.2%, which would take effect approximately nine months after its most recent base rate increase of approximately \$138 million. Supplement Nos. 45 and 47.
3. PAWC proposes two alternative ratemaking mechanisms, including: (a) a Revenue Decoupling Mechanism (“RDM”) that would guarantee that PAWC meets its revenue targets by allowing the Company to adjust rates between base rate cases without Commission review or approval; and (b) an Environmental Compliance Investment Charge (“ECIC”) to recover the capital costs and expenses incurred to address and comply with new or changed federal or state environmental mandates for projects that are not eligible for recovery under the existing Distribution System Improvement Charge (“DSIC”). OCA St. 1 at 9.
4. PAWC is proposing deferred accounting treatment for several expenses, including pension and OPEB expenses, and production costs that change between rate cases. OCA St. 1 at 9-10.
5. PAWC has included six acquisitions in its rate base, some of which are pending approval before the Commission and Commonwealth Court. OCA St. 1 at 10.

Appendix B

Appendix B

Proposed Conclusions of Law

1. Pennsylvania American Water Company (“PAWC” or “Company”) has the burden of proving that its proposed rates are just and reasonable.¹
2. This burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, which remains with the public utility throughout the course of the rate proceeding.²
3. The public utility must satisfy its burden of proof by a preponderance of the evidence, which “means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.”³
4. Section 1301 of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.”⁴
5. PAWC has not fulfilled its burden of proving that its request for an overall rate increase in the amount of approximately \$203.9 million, or 20.2%, will produce just and reasonable rates.
6. PAWC has not carried its burden of demonstrating that the Revenue Decoupling Mechanism or Environmental Compliance Investment Charge are in the public interest.

¹ 66 Pa.C.S. § 315(a). *Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa. Commw. 1990)(citation omitted). *See also*, *Pa. Pub. Util. Comm'n v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

² *PUC v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098, et al., Opinion and Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 19, 2016 Pa. PUC LEXIS 62.

³ *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at *29 (Pa. Commw. Ct. June 2, 2020) (“*NRG Energy, Inc.*”) (citing *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm'n*, 995 A.2d 465, 478 (Pa. Commw. 2010)).

⁴ 66 Pa.C.S. § 1301.