



McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mcneeslaw.com

March 26, 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Main Brief of the Pennsylvania-American Water Large Users Group ("PAWLUG"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare
MCNEES WALLACE & NURICK LLC

c: Christopher P. Pell, Deputy Chief Administrative Law Judge (via e-mail)
John M. Coogan, Administrative Law Judge (via e-mail)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL

Elizabeth Triscari Esq.
Teresa K. Harrold Esq.
Erin K. Fure, Esq.
PA-American Water Company
852 Wesley Drive
Mechanicsburg PA 17055
teresa.harrold@amwater.com
elizabeth.triscari@amwater.com
erin.fure@amwater.com
(Counsel for Pennsylvania-American Water Company)

Kenneth M. Kulak Esq.
Catherine Vasudevan Esq.
Brooke E. McGlinn Esq.
Mark A. Lazaroff Esq.
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia PA 19103-2921
kkulak@morganlewis.com
cvasudevan@morganlewis.com
bmcglinn@morganlewis.com
mark.lazaroff@morganlewis.com
(Counsel for Pennsylvania-American Water Company)

Carrie B. Wright, Esq
PA PUC Bureau of Investigation
and Enforcement
400 North Street
Harrisburg PA 17120
carwright@pa.gov
(Counsel for I&E)

Steven C. Gray Esq.
Rebecca Lyttle, Esq.
Office of Small Business Advocate
Forum Place
555 Walnut Street 1st Floor
Harrisburg PA 17101
sgray@pa.gov
relyttle@pa.gov
(Counsel for Office of Small Business Advocate)

Christopher M. Andreoli, Esq.
Andrew J. Zerby, Esq.
Melanie El Atieh, Esq.
David T. Evrard, Esq.
Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street 5th Floor
Forum Place
Harrisburg PA 17101
OCAPAWC2023@paoca.org
(Counsel for Office of Consumer Advocate)

Joseph L. Vullo Esq.
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@bvrrlaw.com
(Counsel for Commission on Economic Opportunity)

Certificate of Service

Page 2

Ria Pereira Esq.
Lauren N. Berman, Esq.
John W. Sweet, Esq.
Elizabeth R. Marx, Esq.
PA Utility Law Project 118 Locust Street
Harrisburg PA 17101 717.710.3839
pulp@pautilitylawproject.org
(Counsel for CAUSE-PA)

Kurt J. Boehm Esq.
Jody Kyler Cohn Esq.
Boehm Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati OH 45202
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
(Counsel for Cleveland-Cliffs Steel)

Sean M. Gallagher, Esq.
Gallagher Law Group
110 East Diamond Street, Suite 101
Butler, PA 16001
smgallagher@gallagher.legal
(Counsel for Cleveland-Cliffs Steel)
NO CONFIDENTIAL MATERIALS

Joan E. London, Esq.
Kozloff Stoudt, P.C.
2640 Westview Drive
Wyomissing, PA 19610
jlondon@kozloffstoudt.com
(Counsel for Borough of St. Lawrence)
NO CONFIDENTIAL MATERIALS

J. Chadwick Schnee, Esq.
Schnee Legal Services, LLC
74 E. Main Street, #648
Lititz, PA 17543
chadwick@schneelegal.com
(Counsel for Exeter Township)
NO CONFIDENTIAL MATERIALS

Karen O. Moury, Esq.
Lauren M. Burge, Esq.
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
kmoury@eckertseamans.com
lburge@eckertseamans.com
(Counsel for Victory Brewing Company)
NO CONFIDENTIAL MATERIALS

Robert Ralls
254 Red Haven Road
New Cumberland, PA 17070
rralls73@yahoo.com
NO CONFIDENTIAL MATERIALS

Kyle Donahue
621 Gibbons Street
Scranton, PA 18505
Kyle.23.donahue@gmail.com
NO CONFIDENTIAL MATERIALS



Adeolu A. Bakare

Counsel to the Pennsylvania-American Water
Large Users Group

Dated this 26th day of March, 2024, at Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	R-2023-3043189
	:	
Pennsylvania-American Water Company, Inc.	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	R-2023-3043190
	:	
Pennsylvania-American Water Company, Inc.	:	

**MAIN BRIEF OF THE
PENNSYLVANIA-AMERICAN WATER LARGE USERS GROUP**

Adeolu A. Bakare (I.D. No. 208541)
Charis Mincavage (I.D. No. 82039)
Kenneth R. Stark (I.D. No. 312945)
Harrison Ryan Block (I.D. No. 334653)
McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 260-1730 (fax)

Counsel to the Pennsylvania-American Large
Users Group

Dated: March 26, 2024

TABLE OF CONTENTS

Table of Contents

	Page
I. INTRODUCTION AND OVERVIEW	1
A. Description of the Party Submitting Brief.....	1
B. Procedural History.....	1
C. Overview of PAWC's Filing.....	2
D. Legal Standards (Burden of Proof).....	2
II. SUMMARY OF ARGUMENT	3
III. OVERALL POSITION ON RATE INCREASE	4
IV. RATE BASE	5
V. REVENUES.....	5
VI. EXPENSES.....	5
A. Payroll Costs – Vacancy Rate	5
B. Annualized Performance Pay (PAWC)	5
C. Group Insurance Expense.....	5
D. 401K, Defined Contribution Plan and Employee Stock Purchase Plan	6
E. Stock-Based Compensation Expense – AWW Executives	6
F. Executive Perquisites (AWW Executives Dividend Equivalents)	6
G. Payroll Taxes	6
H. Insurance Other Than Group.....	6
I. Uncollectible Expense (Rate of Net Write-Offs)	7
J. Arrearage Management Plan ("AMP") Credits – Uncollectible Expense	7
K. Acquisition-Related Expenses.....	7
L. Interest Synchronization	7
M. Amortization Expense	7
N. Call Center Expense	7
O. Depreciation Expense	7
P. Pension and Other Post Employment Benefits ("OPEB") Expense (and Request for Deferred Regulatory Accounting Treatment)	7
Q. Production Expense (and Request for Deferred Regulatory Accounting Treatment).....	8
VII. TAXES	8

VIII.	RATE OF RETURN	8
A.	Summary	8
B.	Proxy Group	8
C.	Capital Structure	8
D.	Cost of Long-Term Debt	8
E.	Return on Equity	9
F.	Business Risks and Management Performance	12
IX.	RATE STRUCTURE AND RATE DESIGN	12
A.	Cost of Service Studies	12
1.	Water Operations	13
2.	Wastewater Operations	20
3.	Cost of Service Studies for Future General Rate Increases	20
4.	Allocation of AMP Costs and Administrative Costs for H2O Programs .	21
B.	Revenue Allocation and Act 11	23
1.	PAWLUG Adjustment to PAWC's Act 11 Revenue Allocation	23
2.	PAWLUG Position on PAWC's Proposed Act 11 Subsidy	25
C.	Tariff Structure	25
1.	Residential Customer Charge	25
2.	Water Rate Design	26
3.	Wastewater Rate Design.....	27
4.	Winter Averaging Wastewater Proposal.....	27
D.	Summary (Including Scale Back of Rates)	27
X.	ALTERNATIVE RATEMAKING REQUESTS	28
A.	Revenue Decoupling Mechanism ("RDM")	28
B.	Environmental Compliance Investment Charge ("ECIC")	30
XI.	LOW-INCOME CUSTOMER ASSISTANCE	31
XII.	SERVICE QUALITY AND CUSTOMER SERVICE ISSUES	31
XIII.	MISCELLANEOUS	31
XIV.	CONCLUSION	31

APPENDIX A: Proposed Findings of Fact
APPENDIX B: Proposed Conclusions of Law
APPENDIX C: Proposed Ordering Paragraphs

TABLE OF AUTHORTIES

Cases

2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261–69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (Pa. PUC 2019).

Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006)

Pa. Indus. Energy Coalition v. Pa. Pub. Util. Comm'n., 653 A.2d 1336, 1350 (Pa. Commw. 1995).

Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-2008-2073938, 2009 WL 884424 *5 (Order entered Mar. 26, 2009)

Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp., Docket No. R-00049255, 2007 WL 2198189 *7-10 (Order entered Jul. 25, 2007).

Pennsylvania Public Utility Commission et. al. v. Philadelphia Gas Works, Docket No. R-2023-3037933, Opinion and Order at 111-112, 138-139 (Nov. 9, 2023)

Philadelphia Industrial and Commercial Gas Users Group v. Pennsylvania Public Utility Commission, Petition for Review, 128 CD 2024 (February 14, 2024).

Pub. Util. Comm'n. v. Philadelphia Gas Works, Docket No. P-00042090, Order (July 8, 2004), p. 7.

Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

Se-Lin Hosiery, Inc. v. Margulies, 70 A.2d 854, 856 n.1 (Pa. 1950).

Statutes

66 Pa. C.S. § 315(a).

66 Pa. C.S. § 332(a).

66 Pa. C.S. § 1301.

66 Pa. C.S. 1304.

I. INTRODUCTION AND OVERVIEW

A. Description of the Party Submitting Brief

The Pennsylvania-American Water Large Users Group ("PAWLUG") is an ad hoc association of large volume customers receiving water utility service from PAWC. PAWLUG members require substantial volumes of water in their operations and the proposed rate increase may have an adverse impact upon their production processes and other operations. Because any change in PAWC's rates would impact the price PAWLUG members pay for service, PAWLUG is an active party to this proceeding.

B. Procedural History

On November 8, 2023, Pennsylvania-American Water Company ("PAWC" or "Company") filed with the Pennsylvania Public Utility Commission ("Commission" or "PUC") proposed Supplement No. 45 to Tariff Water-Pa. P.U.C. No. 5 ("Water Tariff") and proposed Supplement No. 47 to Tariff Wastewater-Pa. P.U.C. No. 16 ("Wastewater Tariff").

On December 13, 2023, PAWLUG filed a Complaint in this proceeding. On January 3, 2024, Administrative Law Judges ("ALJs") Christopher P. Pell and John M. Coogan convened a Prehearing Conference, in which the procedural schedule for this proceeding was developed. Pursuant to the procedural schedule, PAWLUG submitted the Direct Testimony of Billie LaConte on February 1, 2024. PAWLUG also received Direct Testimony on or around February 1, 2024, from the Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), Cleveland-Cliffs, the Commission on Economic Opportunity ("CEO"), the City of Scranton, and Citizens for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"). On February 21, 2024, PAWLUG submitted the Rebuttal Testimony of Billie LaConte and received Rebuttal Testimony from the Company, I&E, OCA, OSBA, and CAUSE-PA. On

March 4, 2024, PAWLUG submitted the Surrebuttal Testimony of Billie LaConte and received Surrebuttal Testimony from PAWC, OCA, OSBA, I&E, and Cleveland-Cliffs.

Evidentiary Hearings in this proceeding were held on March 7, 2024, and March 8, 2024, during which PAWLUG stipulated the testimony of Ms. LaConte into the record. Pursuant to the procedural schedule and 52 Pa. Code Section 5.502, PAWLUG now files this Main Brief.

C. Overview of PAWC's Filing

PAWC's combined filing requests an overall increase in rates of approximately \$203.9 million or 20.2% above the level of pro forma revenues for the Fully-Projected Future Test Year ("FPFTY") ending June 30, 2025. The proposed rate increase for PAWC's water customers comprises \$199.2 million of the combined \$203.9 million rate increase, including \$71.1 million of the wastewater revenue requirement re-allocated to water customers pursuant to Act 11 of 2012 ("Act 11"). PAWC also requests approval for a Revenue Decoupling Mechanism ("RDM"), an Environmental Compliance Investment Charge ("ECIC"), and deferral accounting mechanisms for pension, Other Post-Employment Benefits ("OPEB"), and production expenses.

D. Legal Standards (Burden of Proof)

Section 332(a) of the Public Utility Code requires the following with regard to the burden of proof: "[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."¹ In addition, under section 315 of the Public Utility Code, "[i]n any proceeding . . . involving any proposed or existing rate of any public utility . . . the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility."² Pursuant to Section 332(a) of the Public Utility Code, the "party seeking a rule or order from the

¹ 66 Pa. C.S. § 332(a).

² *Id.* at § 315(a).

Commission has the burden of proof" in a proceeding. In bearing that burden, that proponent must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof.³ The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case.⁴

Accordingly, as the public utility seeking approval of proposed rates, PAWC bears the burden of proof to establish that the proposed rates are just and reasonable.

II. SUMMARY OF ARGUMENT

PAWLUG requests that the Commission consider the following arguments and modify PAWC's proposed filing as necessary to implement each of PAWLUG's recommendations:

- PAWC's requested ROE is overstated and should be reduced to reflect recently authorized ROEs by the Commission and in other jurisdictions.
- PAWC's ROE should be reduced further if any its proposed alternative ratemaking mechanisms and deferral mechanisms are approved.
- PAWC's Incentive compensation expense should be reduced by \$2 million.
- The RDM, ECIC and proposed deferral mechanisms should be rejected.
- If approved, the RDM or ECIC should be conditioned on exclusion of the Industrial and Municipal customer classes and implementation of the customer protections described below.
- The actual maximum hour demand ratio for the residential class from PAWC's most recent demand study should be used for PAWC's CCOSS.
- Other than modifying the maximum hour demand ratio for the residential class, PAWC's CCOSS should be approved as presented in PAWC's Statement No. 12-R.

³ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁴ *See Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950).

- PAWC should conduct a feasibility study for completion of a new demand study upon conclusion of this proceeding and prior to filing its next rate case.
- OCA's proposal to include Rider Demand-Based Industrial Sales ("DIS") and Demand Based Resale Service ("DRS") customers in PAWC's next rate case CCOSS should be rejected.
- Any scale back of the wastewater revenue requirement should be applied first to offset the allocation of PAWC's wastewater revenue requirement to water customers.
- The wastewater subsidy should be re-allocated to the water customers based primarily on the wastewater class cost-of-service consistent with PAWLUG's Main Brief Table 1.
- Industrial class customer charges should be increased and volumetric rates decreased consistent with PAWLUG's Main Brief Table 2.
- Volumetric rates for industrial and municipal customers should be further reduced if the Commission approves a lower revenue requirement for PAWC.

III. OVERALL POSITION ON RATE INCREASE

Pursuant to the Pennsylvania Public Utility Code, "[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable."⁵ In order to ensure that PAWC's rates meet these criteria, the PUC should grant the Company the minimal rate increase necessary to allow it to provide adequate service to its customers, while still maintaining just and reasonable rates. The Commission's review is paramount under the present circumstances, where PAWC filed for a substantial rate increase less than 12 months after the effective date of the rate increase from its prior filing.⁶ PAWLUG is concerned that the pace and amount of PAWC's rate increases are a burden to customers and outpace inflation. As discussed in

⁵ 66 Pa. C.S. § 1301.

⁶ PAWLUG Statement No. 1 at 3.

PAWLUG's testimony, PAWC's customers have experienced significant rate increases in recent years, with rates increasing by 41% from 2017 to 2023 before consideration of this further propose increase.⁷

While PAWLUG is not proposing an independent revenue requirement recommendation, PAWLUG recommends that the Commission review the expense adjustments proposed by I&E and OCA to ensure the utility's proposed rates are adjusted as necessary to protect customer interests, including moderating the impact of the proposed Act 11 allocation. Additionally, PAWLUG proposes limited adjustments to the Company's CCOSS, a revised Industrial and Municipal rate design, and a proportional scale back with a scale back of volumetric rates only for Industrial and Municipal customers. Finally, PAWLUG opposes approval of the proposed RDM, ECIC, and various deferral mechanisms.

IV. RATE BASE

Not applicable.

V. REVENUES

Not applicable.

VI. EXPENSES

A. Payroll Costs – Vacancy Rate

Not applicable.

B. Annualized Performance Pay (PAWC)

Not applicable.

C. Group Insurance Expense

Not applicable.

⁷ PAWLUG Statement No. 1 at 3-4.

D. 401K, Defined Contribution Plan and Employee Stock Purchase Plan

Not applicable.

E. Stock-Based Compensation Expense – AWW Executives

As stated above, PAWLUG is not proposing comprehensive adjustments to PAWC's expenses or a specific revenue requirement recommendation. However, PAWLUG requests that the Commission modify PAWC's proposed incentive compensation expense as the proposal to recover \$4.1 million of incentive compensation costs is inflated by \$2 million. As described in PAWLUG witness's LaConte's Direct Testimony, "PAWC seeks to recover a portion of its incentive compensation that is based on meeting financial targets as well as operations targets."⁸ While PAWC reserves managerial discretion to award incentive compensation as the Company deems appropriate, only incentive compensation associated with operational goals such as customer satisfaction or safety should be recoverable through base rates.⁹

As such, the Commission should reduce PAWC's proposed \$4.1 million of total incentive compensation expense by \$2 million (resulting in total incentive compensation expense of \$2.1 million) to eliminate the recovery of incentive compensation costs tied to financial targets.

F. Executive Perquisites (AWW Executives Dividend Equivalents)

Not applicable.

G. Payroll Taxes

Not applicable.

H. Insurance Other Than Group

Not applicable.

⁸ PAWLUG Statement No. 1 at 8.

⁹ *Id.*

I. Uncollectible Expense (Rate of Net Write-Offs)

Not applicable.

J. Arrearage Management Plan ("AMP") Credits – Uncollectible Expense

Not applicable.

K. Acquisition-Related Expenses

Not applicable.

L. Interest Synchronization

Not applicable.

M. Amortization Expense

Not applicable.

N. Call Center Expense

Not applicable.

O. Depreciation Expense

Not applicable.

P. Pension and Other Post Employment Benefits ("OPEB") Expense (and Request for Deferred Regulatory Accounting Treatment)

While the Commission is authorized to consider alternative ratemaking mechanisms filed pursuant to Act 58 of 2018, the general rule remains that single issue ratemaking is disfavored.¹⁰ Commission precedent prohibits single-issue ratemaking if it "impacts on a matter that is normally considered in a base rate case."¹¹ PAWLUG witness LaConte testified that PAWC's proposed OPEB, pension, and production deferral mechanisms are examples of single-issue

¹⁰ *Pub. Util. Comm'n. v. Philadelphia Gas Works*, Docket No. P-00042090, Order (July 8, 2004), p. 7.

¹¹ *Pa. Indus. Energy Coalition v. Pa. Pub. Util. Comm'n.*, 653 A.2d 1336, 1350 (Pa. Commw. 1995).

ratemaking.¹² Ms. LaConte expressed concern that this type of single-issue ratemaking “ignores the impact of any offsetting over recovery for other costs, which, thereby, negates the need for the deferral mechanism.”¹³

PAWC’s proposed deferral mechanisms should be denied. If the Commission approves any of the proposed deferral mechanisms, the impact on PAWC’s operational risk should be considered in review of PAWC’s proposed ROE.

Q. Production Expense (and Request for Deferred Regulatory Accounting Treatment)

See Section VI.P.

VII. TAXES

Not applicable.

VIII. RATE OF RETURN

A. Summary

See Section VIII.E.

B. Proxy Group

Not applicable.

C. Capital Structure

Not applicable.

D. Cost of Long-Term Debt

Not applicable.

¹² PAWLUG Statement No. 1 at 19.

¹³ *Id.*

E. Return on Equity

As detailed in PAWLUG's Direct Testimony, numerous indicators show PAWC's proposed ROE to be excessive and unreasonable. PAWC's proposed ROE becomes particularly unreasonable when considered alongside the various alternative ratemaking mechanisms proposed by the Company which, if approved, would reduce the Company's operating risks. Accordingly, PAWLUG recommends that the Commission reject PAWC's proposed ROE.

In conjunction with the alternative ROE recommendations developed by other parties, PAWLUG requests that the Commission consider indicators collectively establishing the unreasonableness of PAWC's recommended ROE. PAWC developed a recommended range of reasonableness of 10% to 11.25% and requests approval of an ROE of 10.95%.¹⁴ PAWLUG witness Bille LaConte observes that PAWC's proposed ROE exceeds the 9.45% average ROE for a domestic water utility by 150 basis points.¹⁵ The 10.95% ROE exceeds the fully litigated ROE of 10% approved by the Commission in Aqua's 2022 base rate case by 95 basis points.¹⁶ The Commission should also consider that PAWC's proposed ROE exceeds the September 30, 2023, proxy ROE developed by the Commission's Bureau of Technical Utility Services for purposes of calculating water Distribution System Improvement Charges ("DSIC").¹⁷

PAWC's proposed ROE is particularly egregious because it omits any adjustment for the various alternative rate and deferral mechanisms proposed by the Company to further reduce its operational risks. PAWLUG Witness LaConte summarizes PAWC's proposals and the impact on its risk profile as follows:

¹⁴ PAWC Statement No. 13, at 8.

¹⁵ PAWLUG Statement No. 1 at 7.

¹⁶ See PAWLUG Statement No. 1 at 5.

¹⁷ *Id.*

PAWC is requesting two alternative ratemaking mechanism clauses, a Revenue Decoupling Mechanism (RDM) and an Environmental Compliance Investment Charge (ECIC), in addition to its proposal for two deferral mechanisms. Adjustment clauses reduce regulatory lag and PAWC's financial volatility, ensuring PAWC will recover its projected revenues. PAWC's proposed RDM combined with its ECIC create a low risk profile for PAWC, which lowers its financial risk. In addition, PAWC's two proposed deferral mechanisms, described in more detail below, further reduce its financial risk.¹⁸

By seeking approval of these alternative ratemaking and deferral mechanisms without addressing the impact on its financial risk profile through adjustments to its ROE, PAWC unreasonably shifts operational risks from shareholders to ratepayers.

PAWC's attempts to characterize the proposed alternative ratemaking and deferral mechanisms as industry standards are inaccurate and should be given no weight. PAWC's testimony argues its alternative ratemaking and deferral mechanisms are common attributes among the utilities in the proxy group from its ROE analysis and therefore Commission approval of the mechanisms would not reduce PAWC's operational risks in comparison to these utilities.¹⁹

With regard to revenue decoupling, PAWC witness Bulkley avers that "[n]umerous regulatory commissions have rejected a reduction in the authorized ROE as a result of the approval of revenue decoupling mechanisms if such mechanisms were prevalent among the proxy companies being used to estimate the ROE."²⁰ Ms. Bulkley observes that "59 percent of PAWC's proxy group had implemented some form of revenue stabilization mechanism and therefore the Company would be more comparable to the group if the proposed RDM and ECIC were approved."²¹ Ms. Bulkley's comments significantly misrepresent the similarities between the proxy group and PAWC's proposals. Of the 59% of the proxy group with some form of

¹⁸ See PAWLUG Statement No. 1 at 5.

¹⁹ See PAWLUG Statement No. 1S at 9 *citing* PAWC Statement No. 10-R at 77.

²⁰ PAWC Statement No. 13-R at 8.

²¹ *Id.* at 81.

revenue stabilization mechanism (which will be discussed below), most are gas and electric utilities. Examination of the water utilities in PAWC's proxy group show only 5 of 23 have any kind of revenue stabilization mechanism.²² As explained in detail by I&E witness D.C. Patel, water and wastewater utilities face less competition and different operational, safety, and weather-related risks compared to their electric and gas counterparts.²³

Further, the term "revenue stabilization mechanisms" as applied in Ms. Bulkley's analysis refers primarily to weather normalization adjustment mechanisms.²⁴ A review of the survey cited by PAWC as support for the prevalence of revenue decoupling among the proxy group shows the majority of revenue decoupling mechanisms classified as "partial" are in fact weather normalization adjustments.²⁵ Weather normalization adjustment mechanisms are not comparable to PAWC's proposed revenue decoupling mechanism as "weather normalization adjustment mechanisms are generally limited to Residential customers and only adjust revenue for weather variation."²⁶ This overgeneralized classification explains why the survey references prior approval of revenue decoupling in Pennsylvania, because the weather normalization adjustment mechanism approved for Columbia Gas of Pennsylvania is counted as a "revenue decoupling mechanism" for purposes of Ms. Bulkley's analysis.

As for the ECIC, the pension/OPEB deferral mechanism, or the production deferral mechanism, PAWC did not identify any companies in the proxy group with similar mechanisms. PAWC suggests that the ECIC is "commonplace" due to the prevalence of "infrastructure

²² PAWLUG Statement 1S at 9-10.

²³ I&E Statement No. 2 at 14.

²⁴ PAWLUG Statement No. 1S at 10.

²⁵ *Id.*

²⁶ *Id.*

replacement mechanisms," but this association conflates the ECIC with more traditional infrastructure surcharge mechanisms, like PAWC's existing DSIC.²⁷

In conclusion, the Commission has been presented with three ROE recommendations based on numerous underlying models, including PAWC's proposed 10.95% ROE, PAWC's calculated 10% - 11.25% range of reasonableness, OCA's proposed 9.1% ROE, and I&E's proposed 8.45% ROE.²⁸ Rather than recommend a specific ROE, PAWLUG requests that the Commission reject the 10.95% ROE proposed by PAWC and consider the evidence presented by PAWLUG in determining a reasonable ROE based on range of reasonableness supported by the parties' analyses.

F. Business Risks and Management Performance

See Section VIII.E. regarding business risks.

IX. RATE STRUCTURE AND RATE DESIGN

A. Cost of Service Studies

The Commission has long held cost of service to be the polestar of utility ratemaking.²⁹ The critical importance of preserving cost-based rates is especially pointed in this case, where PAWC seeks a rate increase for its water customers less than 12 months following the effective date of its last rate increase and of which \$71.1 million of the proposed revenue increase for water customers consists of a shift of PAWC's wastewater revenue requirement pursuant to Act 11. For these reasons, the Commission should take particular care to adhere to cost-of-service principles in disposing of the various cost of service recommendations in this case.

²⁷ See PAWC Statement No. 13 at 50-51 *but see* PAWLUG Statement No. 1S at 10.

²⁸ PAWC Statement No. 13 at 8, OCA Statement No.

²⁹ See *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006); *see also, e.g., Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2008-2073938, 2009 WL 884424 *5 (Order entered Mar. 26, 2009); *see, e.g., Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp.*, Docket No. R-00049255, 2007 WL 2198189 *7-10 (Order entered Jul. 25, 2007).

As detailed below, PAWLUG does not contest PAWC's proposal to utilize the base extra capacity methodology for the water CCOSS. However, PAWLUG opposes PAWC's proposed maximum hour demand ratio proposed for the Residential customer class. PAWLUG also opposes various proposals to adjust PAWC's CCOSS proposed by other intervenors. OCA unreasonably proposes to require PAWC's firm service Industrial customers to subsidize the revenue shortfall created by PAWC's sole interruptible customer, instead of socializing such costs among all customers consistent with PAWC's prior practice and proposal in this proceeding. Both OCA and I&E develop estimated systemwide maximum demand allocators that should be rejected in favor of prospective solutions to comprehensively update PAWC's demand data. PAWLUG also requests that the Commission deny the OCA's proposal to allocate the costs of PAWC's Arrearage Management Program ("AMP") to non-Residential customers.

PAWLUG takes no position on PAWC's wastewater CCOSS other than to raise concern with the scope of PAWC's proposed allocation of the wastewater revenue requirement to water customers pursuant to Act 11. While Act 11 authorizes the Commission to approve such allocations, it does not require so. PAWC's proposal for the water customers to absorb a second rate increase, with 70% of the water revenue requirement attributable to the Act 11 allocation, less than 18 months after the prior water rate increase is unreasonable. At minimum, the Commission should adopt PAWLUG's proposal to apply any approved reductions to the wastewater revenue requirement to reduce the Act 11 subsidy.

1. Water Operations

With the sole exception, of PAWC's proposed maximum hour demand ratio for the Residential customer class, PAWLUG supports the CCOSS developed by PAWC for this rate case. The Commission should adjust PAWC's proposed CCOSS to use the actual maximum

hour demand ratio for the Residential customer class. The various modifications proposed by other intervenors should be rejected for the reasons discussed below.

a. PAWC Proposed Maximum Hour Demand Ratio for the Residential Customer Class

PAWC's proposed CCOSS includes a customer class demand study conducted from 2013-2015.³⁰ For purposes of this CCOSS, PAWC incorporates an adjustment to the results of the customer survey. PAWC acknowledges that the survey results demonstrate a maximum hour demand ratio of 6.0 over the 2013-2015 period for the Residential customer class.³¹ However, PAWC adjusted the ratio to 5.0 because; (1) peak demand data for one monitoring area, North Strabane, was not available in 2015 when the actual maximum hour demand was recorded; and (2) the resulting 2015 peak occurred in the winter instead of the summer, which PAWC claims is an anomaly.³² Despite PAWC's representations, review of the demand data shows winter peaks to be common occurrences. The demand data shows that the same Shire Oaks monitoring area registered a 2013 peak in November, while the Ridge Road Booster monitoring area registered a 2014 peak in February.³³ These results were not excluded by PAWC, which makes the exclusion of the 2015 peak inconsistent with PAWC's treatment of the prior years.³⁴ As for the unavailability of demand data for North Strabane in 2015, the study shows PAWC did not have data for the Sandy Ridge monitoring point in 2014, but made no adjustments for that omission.³⁵

For the reasons discussed above, the selective adjustment to PAWC's maximum hour demand ratio for the Residential customer class is unsupported and unduly prejudices PAWC's

³⁰ PAWLUG Statement No. 1 at 22.

³¹ PAWC Statement No. 12-R at 8.

³² *Id.* at 8-9.

³³ PAWLUG Statement No. 1S at 2.

³⁴ *Id.*

³⁵ PAWC Statement No. 12-R, Exhibit CEH-3R, at 2.

non-Residential customers. As set forth PAWLUG Statement No. 1, Exhibit__(BSL-3), correcting the maximum hour demand ratio for the Residential customers class from 5.0 to 6.0 increases the Residential cost of service by \$7.6 million at PAWC's proposed revenue requirement.³⁶ The Commission should modify PAWC's CCOSS to reflect the 6.0 actual maximum hour demand ratio for the Residential customer class.

b. OCA Proposal to Combine Interruptible Industrial Usage with Firm Industrial Usage for CCOSS Purposes

PAWC's Direct Testimony reviewed the Company's practice of adjusting the CCOSS study to remove Interruptible usage from the extra capacity factor allocations.³⁷ PAWC bases this adjustment on the fact that a curtailment customer is required to maintain on site storage capacity to curtail usage during peak demand periods, meaning any such customer does not contribute to extra-capacity demand costs.³⁸ Through discovery, PAWC disclosed that its supporting COSS exhibits mistakenly omitted the adjustment. PAWC corrected this error in its Rebuttal Testimony.³⁹ Notwithstanding PAWC's clarification of the clear error and correction through discovery, OCA's Direct Testimony recommends that PAWC reverse the correction and include Interruptible usage within the allocation of extra capacity demand costs.⁴⁰ OCA's proposal is contrary to cost of service principles and should be rejected.

OCA's proposal to treat Interruptible usage as firm for purposes of CCOSS derives from the Commission's recent decision in a Philadelphia Gas Works ("PGW") rate case.⁴¹ Here, the

³⁶ PAWLUG Statement No. 1, Exhibit__(BSL-3).

³⁷ PAWC Statement No. 12 at 14.

³⁸ *Id.*

³⁹ PAWC Statement No. 12-R at 2.

⁴⁰ OCA Statement No. 4 at 14.

⁴¹ *Pennsylvania Public Utility Commission et. al. v. Philadelphia Gas Works*, Docket No. R-2023-3037933, Opinion and Order at 111-112, 138-139 (Nov. 9, 2023) ("PGW PUC Order")

Commission agreed with PGW that interruptible demand should be treated as firm for purpose of PGW's CCOSS. OCA requests that the Commission make the same finding here on grounds that PAWC's sole interruptible customer has not been interrupted in 20 years.⁴² First, the Commission should consider that the PGW case remains subject to appeal on the specific issue of whether the Commission's treatment of interruptible usage as firm violates the Public Utility Code.⁴³ Moreover, the PGW case involved a factual record distinct from the record in this proceeding.

In the PGW rate case, the Commission determined that the treatment of interruptible usage as firm aligned with cost-of-service principles based on the facts of that case. In particular, the Commission reached the following finding:

As noted by the OCA, because the *interruptible class of customers* has not been interrupted in nearly twenty years, it is using the Company's distribution system during peak periods. Accordingly, we agree with the OCA that PGW's AED [Average and Excess Demand] ACCOSS, where the *IT class* is treated as receiving firm service, more closely aligns with cost causation. (Citations omitted) (Emphasis added).⁴⁴

Importantly, the Commission's finding relates to the treatment of PGW's Rate Industrial Transportation ("IT") customer class. The determination to treat the IT customer class as firm was intended to align interruptible service with cost causation. In this proceeding, OCA attempts to apply the same finding to different circumstances. In principal, the circumstances of the two cases are not analogous because PAWC does not have an interruptible customer class.⁴⁵ As recognized in OCA's testimony, "[t]he Company has separately identified the cost of serving

⁴² OCA Statement 4SR at 9.

⁴³ *Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") v. Pennsylvania Public Utility Commission*, Petition for Review, 128 CD 2024 (February 14, 2024).

⁴⁴ PGW PUC Order at 138.

⁴⁵ OCA Statement No. 4 at 13.

eight customer classes in its water CCOS study: Residential, Commercial, Industrial, Public (Municipal), Other Water Utilities Group A, Other Water Utilities Group B, Private Fire Protection, and Public Fire Protection."⁴⁶

OCA's proposal to simply to include interruptible usage with Industrial customer class allocation for extra capacity demand costs does not align with cost causation because the vast majority of PAWC's Industrial customers are firm service customers and are already paying rates set in alignment with cost causation for firm service. As stated by PAWC Witness Heppenstall "this adjustment to the cost of service for Industrial curtailment customers has been reflected in the Company's cost of service studies since at least the Company's 2007 rate case and Docket No. R-00072229 and has long been accepted by the Commission and other parties."⁴⁷ As the Industrial Curtailment volumes have been excluded from each CCOS over PAWC's subsequent rate cases, the rates developed for the Industrial General Service class throughout PAWC's rate cases were set in consideration of the cost of service for firm Industrial customers. Increasing the cost of service for PAWC's Industrial class to now include Interruptible usage creates substantial complications not present in the PGW case, including a likelihood of intraclass subsidization of PAWC's sole interruptible Industrial customer by the remaining firm Industrial customers. Simply put, the Commission's decision in the PGW rate case allowed for treatment of interruptible usage as firm for purpose of bringing the interruptible customers closer to cost of service. It did not allow for the treatment of interruptible usage as firm in order for firm Industrial customers to subsidize interruptible Industrial customers. For these reasons, the Commission should deny OCA's proposal.

⁴⁶ *Id.*

⁴⁷ PAWC Statement No. 12-R at 10.

c. OCA Proposed Systemwide Demand Allocators

As discussed above, PAWLUG proposed to modify PAWC's CCOSS to correct the maximum hour demand ratio for the Residential customer class. OCA proposed separate adjustments to PAWC's systemwide maximum day and maximum hour demand ratios, from which the individual customer class demand ratios are derived. These proposals from PAWLUG and OCA are distinct, as PAWLUG seeks only to apply the actual results of PAWC's customer class demand study without any selective or unsubstantiated adjustments. OCA's proposed adjustments to the systemwide maximum day and hour demand ratios incorporate selective new data, including data from another public utility.⁴⁸ While PAWLUG concurs with OCA on the need for updates to PAWC's systemwide demand study, PAWLUG supports comprehensive updates based on PAWC's system data. Accordingly, as discussed below, the Commission should address updates to PAWC's systemwide demand data prospectively.

OCA takes issue with PAWC's proposed systemwide maximum day demand ratio of 1.4 and its systemwide maximum hour demand ratio of 2.1.⁴⁹ OCA observes that PAWC's systemwide demand factors are based on outdated data collected from 1988 – 2003 and must be updated. In the absence of a properly updated study, OCA proposes to combine maximum day data collected from 2011 – 2022 with maximum hour data submitted by the York Water Company for its most recent base rate proceeding in order to propose revised systemwide maximum hour and maximum day demand ratios of 1.2 and 1.5 respectively.⁵⁰

While OCA intends to "update" PAWC's systemwide demand factors, its proposal would add further uncertainty and unreasonableness to PAWC's CCOSS. While OCA's proposed

⁴⁸ PAWLUG Statement No. 1-R at 3-4.

⁴⁹ OCA Statement No. 4 at 15.

⁵⁰ *Id.* at 16-17.

systemwide maximum day demand ratio is based on updated PAWC data, the maximum day demand ratio was taken from a completely different system. As stated by PAWLUG witness

LaConte:

While Mr. Mierzwa's maximum day ratio is reflective of more current data, his maximum hour ratio is not accurate because it is based on the operations of a separate water utility whose customer base and operating characteristics will vary from PAWC's customer base and water operations. As such, Mr. Mierzwa's revised CCOSS using his proposed maximum hour and maximum day ratios incorrectly allocates costs to each rate class, resulting in rates that are not cost based.⁵¹

The Commission should decline to address concerns with the age of PAWC's demand study by allocating a proposed \$199.2 million water increase based on demand data drawn from a single utility with vastly different system operations compared to PAWC. Accordingly, OCA's proposed maximum systemwide maximum day demand and systemwide maximum hour demand factors should be rejected.

d. OSBA Proposed Systemwide Demand Allocators

OSBA proposes a modified version of OCA's proposal to modify PAWC's systemwide maximum day and hour demand ratios. OSBA concurs with OCA's proposed 1.4 maximum day demand ratio, but proposes to substitute OCA's 1.5 maximum hour demand ratio based on York Water Company data with a 1.8 maximum hour demand factor determined by scaling PAWC's 2.1 maximum hour demand ratio to replicate the proposed adjustment to PAWC's maximum day demand factor.⁵² Essentially, OSBA proposes to trade older actual data for more current estimated data. As stated above, the Commission should decline to accept piecemeal estimations in lieu of a comprehensive and rigorous update to PAWC's demand study. Like OCA's proposed

⁵¹ PAWLUG Statement No. 1R at 3-4.

⁵² OSBA Statement No. 1-R at 4.

adjustment, OSBA's proposed maximum day and maximum hour demand ratios include arbitrary data and should not be relied upon for allocation of PAWC's water revenue requirement.

2. Wastewater Operations

Not applicable.

3. Cost of Service Studies for Future General Rate Increases

While PAWLUG opposes OCA's proposals to modify PAWC's systemwide demand factors in this proceeding, the underlying question of whether PAWC's demand study should be updated should be addressed. PAWLUG supports prospective efforts to update PAWC's demand study. However, PAWLUG recommends the Commission deny OCA's proposal to additionally modify PAWC's future CCOSS to include Rider DIS and DRS in the CCOSS.

In Direct Testimony, PAWLUG recommended that PAWC conduct a new demand study to confirm its demand ratios reflect current usage and demand patterns.⁵³ PAWC claims PAWLUG's recommendation would require substantial expense and coordination of stakeholder input.⁵⁴ PAWC further suggests that an interim step of conducting a feasibility study is a necessary prerequisite.⁵⁵ PAWLUG does not object to proceeding with a feasibility study as an initial step, but requests that the feasibility study be presented with PAWC's next base rate filing rather than being presented for comment and review between rate filings.⁵⁶ Incorporating review of the feasibility study as part of the next rate filing avoids burdening intervenors with multiple regulatory proceedings. This proposal would necessarily extend the use of PAWC's existing

⁵³ PAWLUG Statement No. 1 at 22.

⁵⁴ PAWC Statement No. 12-R at 9.

⁵⁵ *Id.*

⁵⁶ PAWLUG Statement No. 1S at 5.

demand study for one additional rate case, but also achieve incremental progress towards a comprehensively updated demand study.⁵⁷

OCA additionally proposes to modify PAWC's prospective CCOSS to include Rider DIS and Rider DRS customers. As stated in OCA's testimony, PAWC has historically excluded Rider DIS and DRS customers from the CCOSS and allocated revenue from these customers as a credit to the overall cost of service, thereby reducing the overall revenue requirement for all customers.⁵⁸ OCA claims this proposal will ensure that the rates charged to Rider DIS and DRS customers are reasonable.

OCA's proposal should be denied. Both Rider DIS and DRS prescribe minimum rate requirements for these customers in the tariffs.⁵⁹ There is no record of discovery disputes where PAWC has declined to respond to any inquiry concerning compliance with the minimum rate requirements. OCA's proposal presents a solution to a perceived problem that has not been remotely substantiated through the available means. Accordingly, the Commission should deny OCA's request.

4. Allocation of AMP Costs and Administrative Costs for H2O Programs

As previously, referenced, PAWC issued a revised CCOSS through discovery and subsequently adopted the revised CCOSS in its Rebuttal Testimony.⁶⁰ In addition to correcting the aforementioned adjustment to exclude interruptible load from the CCOSS, PAWC also corrected its allocation of low-income program costs, including costs of its AMP and administrative costs for other low-income programs.⁶¹ Where PAWC's as-filed CCOSS

⁵⁷ PAWLUG Statement No. 1S at 5.

⁵⁸ OCA Statement No. 4 at 19.

⁵⁹ PAWC Statement No. 12-R at 11.

⁶⁰ *Id.* at 2-3, 10-11.

⁶¹ *Id.* at 10-11.

allocated low income program costs to all customers, the revised CCOSS allocates AMP costs to Residential customers consistent with cost-of-service principles aligning costs for programs benefitting Residential customers to the Residential customer class.⁶² OCA argues that this correction should be reversed on grounds that that: (1) there are no incremental costs of the AMP; and (2) the administrative costs of other low-income programs reduce the Company's administrative costs of bad debt.⁶³ CAUSE-PA proposes the same result, but cites the Commission recent policy determinations from its Final CAP Policy Statement and Order.⁶⁴

PAWLUG concurs with OSBA that, to the extent to the extent the Commission approves recovery of incremental costs of the AMP, such costs are properly allocated to Residential customers. Similarly, the administrative costs of other low-income programs are properly allocated to Residential customers. Any positive impact on bad debt expense resulting from these programs would benefit the Residential class by improving collectibles for Residential customers and reducing the class's allocation of bad debt expense. Moreover, CAUSE-PA's reliance on the Commission's policies related to cost recovery for mandatory electric and gas Customer Assistance Programs should be disregarded as irrelevant to PAWC's voluntary low-income programs.⁶⁵ Accordingly, the Commission should approve PAWC's CCOSS revisions allocating any incremental AMP costs and administrative costs for other low-income programs to Residential customers.

⁶² PAWC Statement No. 12-R at 10.

⁶³ OCA Statement No. 5-R at 4, 6.

⁶⁴ CAUSE-PA Statement No. 1 at 4. CAUSE-PA's witness curiously indicates his testimony does not address the applicability of the CAP Policy Statement to PAWC. *Id.* Accordingly, the testimony deriving from the language and guidance in the CAP Policy Statement should be given no weight.

⁶⁵ See PAWLUG Statement No. 1S at 15. As stated in the CAP Policy Statement, "The Commission's CAP Policy Statement at 52 Pa. Code §§ 69.261–69.267 (adopted in 1992 and amended in 1999 and 2010) applies to Class A EDCs and NGDCs with gross intrastate annual operating revenue in excess of \$40 million." *2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261–69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (Pa. PUC 2019).*

B. Revenue Allocation and Act 11

PAWC's proposed revenue allocation adopts its CCOSS and incorporates a shift of \$71.1 million of the wastewater revenue requirement to the water customers pursuant to Act 11. PAWLUG supports adoption of PAWC's CCOSS subject only to the aforementioned change to the Residential customer class maximum hour demand ratio from 5.0 to 6.0. With regard to PAWC's proposed revenue allocation, PAWLUG recommends that the Commission slightly modify PAWC's allocation of the Act 11 subsidy to reflect cost causation for directly assignable costs. With regard to the amount of the proposed Act 11 allocation, PAWLUG is deeply concerned that requiring water customers to absorb \$71.1 million of PAWC's wastewater revenue requirement under the circumstances of back-to-back rate cases unreasonably burdens PAWC's water customers. PAWC requests that the Commission act to moderate the impact of the proposed Act 11 allocation, including applying any approved reduction to the wastewater revenue requirement to reduce the Act 11 allocation.

1. PAWLUG Adjustment to PAWC's Act 11 Revenue Allocation

PAWC proposes to allocate the Act 11 subsidy among the water customer classes based partly on the water cost-of-service. PAWLUG witness LaConte describes PAWC's methodology as follows:

PAWC directly assigned the combined sewer system's wastewater subsidy to the residential, commercial, industrial and municipal customer classes. For the portion of the subsidy attributable to the sanitary sewer system, Butler and Brentwood, PAWC allocated the non-residential subsidy to the commercial, industrial, municipal and fire service customer classes based on their total water cost of service. The portion of the subsidy caused by other customer classes (such as bulk customers) is allocated to all customer classes, including the residential class, based on their total water cost of service.⁶⁶

⁶⁶ PAWLUG Statement No. 1 at 26.

Simply put, PAWC assigned direct costs based on wastewater cost-of-service, but assigned indirect costs based on water cost-of-service.⁶⁷ PAWLUG witness LaConte proposes to modify PAWC's allocation of the portion of the sanitary sewer system attributed to non-residential commercial, industrial, and municipal customers to assign those costs based on wastewater cost-of-service in order to further align the Act 11 allocation with the cost causation. The results are shown in the below table from page 7 of PAWLUG's Surrebuttal Testimony:

PAWLUG Brief Table 1⁶⁸ Revised Re-allocation of Wastewater Subsidy (\$Millions)				
Customer Class	PAWC Proposed Re-allocation		PAWLUG Proposed Re-allocation	
	\$	%	\$	%
Residential	\$45.9	64.5%	\$46.0	64.8%
Commercial	\$17.6	24.7%	\$19.6	27.6%
Large Industrial	\$4.5	6.4%	\$4.3	6.0%
Municipal	\$2.7	3.8%	\$1.1	1.5%
Fire	\$0.4	0.6%	\$0.07	0.1%
Total	\$71.1	100.0%	\$71.1	100.0%

PAWC does not appear to necessarily oppose Ms. LaConte's proposed adjustments, but notes that "[i]t is appropriate to match a class for class reallocation as much as possible but there will always be an element of an allocation to water customers based on cost of service".⁶⁹ PAWC's observation is not inconsistent with Ms. LaConte's proposed adjustment as it preserves PAWC's allocation method for the "Other customer class" component of the Act 11 allocation. PAWLUG's revised allocation acknowledges some incongruity between the water and

⁶⁷ See Cleveland Cliffs Statement No. 1 at 6 (restating PAWC's response to Interrogatory OSBA-01-018).

⁶⁸ PAWLUG Statement No. 1S at 7 (originally presented as PAWLUG Surrebuttal Testimony Table 1).

⁶⁹ PAWC Statement No. 10-R at 34.

wastewater customer classes, but appropriately aligns a greater portion of the Act 11 allocation on the basis of wastewater cost-of-service.⁷⁰

2. PAWLUG Position on PAWC's Proposed Act 11 Subsidy

PAWC relies on Act 11 to justify its allocation of \$71.1 million of its wastewater revenue requirement to the water customers in this case. While PAWLUG acknowledges that Act 11 authorizes the Commission to approve such allocations for combined water and wastewater utilities, the Commission also reserves broad discretion to determine when and to what degree such an inter-utility reallocation is just and reasonable. As an exception to the Commission's general adherence to cost-of-service ratemaking, Act 11 allows the Commission to allocate the Commission to force "customers who do not receive wastewater service from PAWC to pay for a service they do not receive."⁷¹ Here, where PAWC's water customers very recently experienced a prior rate increase in January 2023, the Commission should take a conservative approach to PAWC's Act 11 allocation in order to minimize the rate impact of PAWC's water customers. Accordingly, PAWLUG requests that, at minimum, the Commission apply any and all approved reductions to PAWC's wastewater revenue requirement to first reduce the Act 11 subsidy before scaling back any wastewater customer class revenue requirements.⁷²

C. Tariff Structure

1. Residential Customer Charge

Not applicable.

⁷⁰ PAWLUG Statement No. 1 at 26.

⁷¹ *Id.* at 24.

⁷² *Id.* at 26.

2. Water Rate Design

As part of its justification for proposing the RDM and ECIC, PAWC asserts an interest in reducing revenue volatility. For reasons discussed below, PAWLUG opposes approval of the RDM and ECIC. However, for Industrial customers, PAWC can address revenue stability through more traditional means by increasing the Industrial customer charge for customer with meter that are 6" or larger. In this proceeding, PAWC proposed no increase at all to the Industrial customer charge.⁷³ In order to ensure more stable revenue from the Industrial customer class, PAWLUG proposes that adoption of the below modified rate design developed by witness LaConte:

PAWLUG Main Brief Table 2⁷⁴ Revised Industrial Rate Design			
Description	Current	PAWC	PAWLUG
Customer Charge			
6" Meter	\$1,401	\$1,401	\$2,802
8" Meter	\$2,243	\$2,243	\$4,486
10" Meter	\$3,223	\$3,223	\$6,446
Volumetric Charge			
First 16,000 Gal	\$1.4200	\$1.9128	\$1.4346
Next 584,000 Gal	\$1.0804	\$1.4824	\$1.2600
All Over 600,000 Gal	\$0.8499	\$1.1477	\$1.1279

PAWLUG's revised rate design would recover 17% of PAWC's Industrial revenue requirement through the fixed charges, compared to PAWC's determination that 95% of its operating costs are fixed.⁷⁵

⁷³ PAWLUG Statement No. 1 at 28.

⁷⁴ *Id.* at 29 (originally presented as PAWLUG Direct Testimony Table 3).

⁷⁵ *Id.* at 28.

PAWC opposes PAWLUG's proposed rate design on the basis that it is not cost-based.⁷⁶ However, PAWC's customer charge analysis only provides a cost basis for the 5/8 meter customer charge.⁷⁷ As PAWC has not established the cost-basis for the existing Industrial customer charge and the overall revenue requirement allocated to Industrial customers would remain unchanged by PAWLUG's proposed rate design, the proposal is reasonable and should be approved by the Commission.

3. Wastewater Rate Design

Not applicable.

4. Winter Averaging Wastewater Proposal

D. Summary (Including Scale Back of Rates)

To recap PAWLUG's revenue allocation arguments, the Commission should accept PAWC's revised CCOSS with the sole exception of modifying the Company's proposed maximum hour demand ratio for the Residential customer class. PAWC's proposal to allocate \$71.1 million of the wastewater revenue requirement to water customers pursuant to Act 11 should be modified to adopt witness LaConte's revised allocation method and apply any approved scaleback of the wastewater revenue requirement to offset the total \$71.1 million allocation amount. PAWLUG's proposal to increase the Industrial customer charge consistent with LaConte's recommendation should be approved.

Lastly, to the extent the Commission approves a lower water revenue requirement than as proposed by PAWC, the Commission should implement a proportional scale back. For the portion attributable to Industrial and Municipal customers, the Commission should scale back

⁷⁶ PAWC Statement No. 10-R at 45.

⁷⁷ PAWC Statement No. 10, Exhibit No. 10-A.

only the volumetric rates for PAWC's Industrial and Municipal customer classes.⁷⁸ This is appropriate for both classes due to the high proportion of total class revenues recovered through the respective volumetric rates.⁷⁹ While applying any scaleback to volumetric rates for both the Industrial and Municipal classes remains appropriate in conjunction with PAWLUG's proposed increase to the Industrial customer charge, it becomes particularly necessary in the event the Commission denies PAWLUG's proposal to increase the Industrial customer charge.

X. ALTERNATIVE RATEMAKING REQUESTS

As discussed above in relation to PAWC's ROE, the Company has proposed a suite of alternative ratemaking mechanisms intended to shift operational risks to customers. As recounted by PAWLUG witness LaConte, PAWC is already taking advantage of numerous tools to manage regulatory lag and rate volatility. PAWC's customers are subject to its water and wastewater DSICs.⁸⁰ Additionally, PAWC's current rates were developed with use of Fully Projected Future Test Year and an Act 11 allocation of costs between the wastewater and water customers.⁸¹ However, the alternative ratemaking proposals presented here are unreasonable and/or discriminatory. Accordingly, the proposals should be denied.

A. Revenue Decoupling Mechanism ("RDM")

PAWC's proposed RDM disadvantages customers on multiple fronts by creating additional administrative burdens, eroding conservation incentives, and exposing customers to interclass subsidization. PAWLUG witness LaConte describes PAWC's RDM as follows:

The RDM would track changes in net revenues (water revenues less production costs) between the authorized revenues for all customers in the residential, commercial, industrial, municipal, and sales for resale classes, excluding

⁷⁸ PAWLUG Statement No. 1 at 29.

⁷⁹ *Id.* at 30.

⁸⁰ *Id.* at 10.

⁸¹ *Id.* at 10.

customers taking service under contract rates. Production costs, which include power, chemicals, purchased water and waste disposal, would be removed. Any positive (negative) difference would be refunded (surcharged) to customers. The RDM would apply to water operations and wastewater operations.⁸²

Ms. LaConte also confirms that the RDM would apply straight-fixed variable rates to actual sales to determine the revenues PAWC should have recovered.⁸³ According to PAWC, the RDM is just and reasonable because revenues will be tracked and PAWC will credit customers for overcollections and issue a surcharge for undercollections.

PAWC's proposed RDM suffers from multiple flaws and would result and unjust, unreasonable, and unduly discriminatory rates.⁸⁴ The proposed surcharge would impose administrative burdens on PAWC's customers by creating a new annual regulatory filing subject to comments and potential hearings.⁸⁵ While PAWC misleadingly argues that the RDM does not eliminate customers' incentive to conserve water, the fact remains that it would erode customers' incentive to conserve water.⁸⁶ Perhaps most concerningly, the RDM conflicts with cost causation by applying a uniform surcharge to all non-residential customers. As concluded by PAWC witness LaConte, this rate structure would "impact interclass cost shifting between the various non-residential customer classes, including commercial, industrial, and municipal water customers."⁸⁷

For the above reasons, PAWC's RDM should be rejected. If the Commission resolves to approve the RDM despite its flaws, it should exempt Industrial and Municipal customers from the RDM due to the lack of evidence that these customers are materially impacted by

⁸² PAWLUG Statement No. 1 at 11.

⁸³ *Id.* at 12.

⁸⁴ 66 Pa. C.S. §§ 1301 & 1304.

⁸⁵ PAWLUG Statement No. 1 at 12.

⁸⁶ *Id.* at 13.

⁸⁷ *Id.* at 13.

conservation measures, weather, or a declining number of customers.⁸⁸ At the minimum, the Commission should condition any approval of the RDM on heightened protections detailed by PAWC witness LaConte, including implementation of an "earnings" test and an asymmetrical 3% cap on a surcharge. As explained by Ms. LaConte, capping the RDM is a critical customer protection because the cap provides customers with a range of impacts for their own annual budgeting.⁸⁹ An earnings test, requiring PAWC to monitor its earnings under the RDM and, where earnings show the Company exceeding its authorized rate of return by more than 50 basis points, refund 50% of the excess earnings to customers through adjustments to the RDM surcharge or credit.⁹⁰

B. Environmental Compliance Investment Charge ("ECIC")

Similar to PAWC's RDM, the proposed ECIC is an unsupported additional surcharge mechanism that would impose unreasonable administratively burden customers without any showing of necessity. PAWC proposes the ECIC to recover costs between rate cases arising from government-mandated environmental standards.⁹¹ While PAWC claims that mechanisms like the ECIC are common, this claims inappropriately conflates the ECIC with a DSIC.⁹² PAWC has not made any showing that ECICs are common in the industry.⁹³ PAWC has further failed to identify any pending environmental costs that would apply to the ECIC. The proposed ECIC is speculative single-issue ratemaking and should not be considered by approval.

⁸⁸ PAWLUG Statement No. 1-R at 10.

⁸⁹ *Id.* at 14.

⁹⁰ *Id.*

⁹¹ PAWC Statement No. 8 at 24.

⁹² PAWLUG Statement No. 1 at 16.

⁹³ *Id.*

While PAWLUG opposes approval of the ECIC, if the Commission finds merit in the proposal, it should be modified to incorporate some measure of customer protections, such as a 3% cap on total annual revenue recovered through the ECIC.⁹⁴

XI. LOW-INCOME CUSTOMER ASSISTANCE

Not applicable.

XII. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES

Not applicable.

XIII. MISCELLANEOUS

Not applicable.

XIV. CONCLUSION

WHEREFORE, the Pennsylvania-American Water Large Users Group respectfully requests that the Pennsylvania Public Utility Commission:

(a) grant Pennsylvania-American Water Company the minimal rate increase necessary to ensure just and reasonable rates for the Company's ratepayers consistent with the recommendations in PAWLUG's Main Brief;

(b) deny Pennsylvania-American Water Company's proposals to implement the Revenue Decoupling Mechanism, Environmental Compliance Investment Charge, and pension, production, and other post-employment benefit deferral mechanisms;


⁹⁴ PAWLUG Statement No. 1 at 17.

(c) Revise Pennsylvania-American Water Company's proposed method for allocating the Act 11 of 2012 wastewater subsidy as set forth in PAWLUG Statement No. 1S; and

(d) approve the Industrial and Municipal Rate Design set forth in PAWLUG Statement No. 1.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By: 

Adeolu A. Bakare (I.D. No. 208541)
Charis Mincavage (I.D. No. 82039)
Kenneth R. Stark (I.D. No. 312945)
Harrison Ryan Block (I.D. No. 334653)
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
rblock@mcneeslaw.com

Counsel to the Pennsylvania-American Large Users
Group

Dated: March 26, 2024

APPENDIX A

PROPOSED FINDINGS OF FACT

1. PAWC filed for a \$203.9 million total rate increase less than 12 months after the effective date of the rate increase from its prior filing. PAWLUG Statement No. 1 at 3.
2. The rate increase proposed for water customers amounts to \$199.2 million of PAWC's proposed total \$203.9 million rate. PAWLUG Statement No. 1 at 3.
3. PAWC's customers have experienced significant rate increases in recent years, with rates increasing by 41% from 2017 to 2023 before consideration of this further propose increase. PAWLUG Statement No. 1 at 3-4.
4. PAWC seeks to recover a portion of its incentive compensation that is based on meeting financial targets as well as operations targets. PAWLUG Statement No. 1 at 8.
5. Bille LaConte observes that PAWC's proposed ROE exceeds the 9.45% average ROE for a domestic water utility by 150 basis points. PAWLUG Statement No. 1 at 7.
6. The 10.95% ROE exceeds the fully litigated ROE of 10% approved by the Commission in Aqua's 2022 base rate case by 95 basis points. See PAWLUG Statement No. 1 at 5.
7. PAWC's proposed ROE exceeds the September 30, 2023, proxy ROE developed by the Commission's Bureau of Technical Utility Services for purposes of calculating water Distribution System Improvement Charges ("DSIC"). See PAWLUG Statement No. 1 at 5.
8. Examination of the water utilities in PAWC's proxy group show only 5 of 23 have any kind of revenue stabilization mechanism. PAWLUG Statement 1S at 9-10.
9. Water and wastewater utilities face less competition and different operational, safety, and weather-related risks compared to their electric and gas counterparts. I&E Statement No. 2 at 14.
10. PAWC survey results from PAWC's most recent demand study demonstrate a maximum hour demand ratio of 6.0 over the 2013-2015 period for the Residential customer class. PAWC Statement No. 12-R at 8.
11. PAWC adjusted the ratio to 5.0 because; (1) peak demand data for one monitoring area, North Strabane, was not available in 2015 when the actual maximum hour demand was recorded; and (2) the resulting 2015 peak occurred in the winter instead of the summer, which PAWC claims is an anomaly. PAWC Statement No. 12-R at 8-9.
12. Review of the PAWC's demand data shows winter peaks to be common occurrences. PAWLUG Statement No. 1S at 2.

13. The demand data shows that the same Shire Oaks monitoring area registered a 2013 peak in November, while the Ridge Road Booster monitoring area registered a 2014 peak in February. PAWLUG Statement No. 1S at 2.
14. PAWC did not have data for the Sandy Ridge monitoring point in 2014, but made no adjustments for that omission. PAWC Statement No. 12-R, Exhibit CEH-3R, at 2.
15. PAWC has eight customer classes: Residential, Commercial, Industrial, Public (Municipal), Other Water Utilities Group A, Other Water Utilities Group B, Private Fire Protection, and Public Fire Protection. OCA Statement No. 4 at 13.
16. PAWC does not have an interruptible customer class. OCA Statement No. 4 at 13.
17. PAWC's adjustment to the cost of service for Industrial curtailment customers has been reflected in the Company's cost of service studies since at least the Company's 2007 rate case and Docket No. R-00072229 and has long been accepted by the Commission and other parties. PAWC Statement No. 12-R at 10.
18. As the Industrial Curtailment volumes have been excluded from each CCOSS over PAWC's subsequent rate cases, the rates developed for the Industrial General Service class throughout PAWC's rate cases were set in consideration of the cost of service for firm Industrial customers. *See* PAWC Statement No. 12-R at 10.
19. In the absence of a properly updated study, OCA proposes to combine maximum day data collected from 2011 – 2022 with maximum hour data submitted by the York Water Company for its most recent base rate proceeding in order to propose revised systemwide maximum hour and maximum day demand factors of 1.2 and 1.5 respectively. OCA Statement No. 4 at 16-17.
20. OCA's revised CCOSS using witness Mierzwa's proposed maximum hour and maximum day ratios incorrectly allocates costs to each rate class, resulting in rates that are not cost based. PAWLUG Statement No. 1R at 3-4.
21. Both Rider DIS and DRS prescribe minimum rate requirements for these customers in the tariffs. PAWC Statement No. 12-R at 11.
22. PAWLUG's revised Act 11 allocation acknowledges some incongruity between the water and wastewater customer classes, but aligns the Act 11 allocation more closely with cost causation. PAWLUG Statement No. 1 at 26.
23. PAWC's customer charge analysis only provides a cost basis for the 5/8 meter customer charge. PAWC Statement No. 10, Exhibit No. 10-A.
24. The proposed RDM would impose administrative burdens on PAWC's customers by creating a new annual regulatory filing subject to comments and potential hearings. PAWLUG Statement No. 1 at 12.

25. The proposed RDM would erode customers' incentive to conserve water. PAWLUG Statement No. 1 at 13.
26. The proposed RDM would impact interclass cost shifting between the various non-residential customer classes, including commercial, industrial, and municipal water customers. PAWLUG Statement No. 1 at 13.
27. PAWC's claims that ECICs are common inappropriately conflate the ECIC with a DSIC. PAWLUG Statement No. 1 at 16.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Pursuant to the Pennsylvania Public Utility Code, "[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable." 66 Pa. C.S. § 1301.
2. "[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a).
3. In bearing that burden, that proponent must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
4. The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case. *See Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950).
5. Single-issue ratemaking is prohibited if it "impacts on a matter that is normally considered in a base rate case." *Pa. Indus. Energy Coalition v. Pa. Pub. Util. Comm'n*, 653 A.2d 1336, 1350 (Pa. Commw. 1995).
6. Single-issue ratemaking is disfavored "based on the rate maker's obligation to consider all of a utility's revenues and costs in the balancing process to achieve just and reasonable rates." *Pub. Util. Comm'n. v. Philadelphia Gas Works*, Docket No. P-00042090, Order (July 8, 2004), p. 7.
7. A utility's cost of providing service must be the guiding principle – or "polestar" – in utility ratemaking. *See Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006); *see also, e.g., Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2008-2073938, 2009 WL 884424 *5 (Order entered Mar. 26, 2009).
8. While other factors may be considered, cost of service should be the primary consideration for ratemaking purposes. *See, e.g., Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp.*, Docket No. R-00049255, 2007 WL 2198189 *7-10 (Order entered Jul. 25, 2007) (PUC order citing *Lloyd* in support of settlement of distribution rate increase based on cost of service principles).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. Tariff Water-Pa. P.U.C. No. 5 and Tariff Sewer-Pa. P.U.C. No. 16 are approved as modified by this Order adopting expense, rate of return, cost-of-service, revenue allocation, rate design, scale back, and other adjustments proposed by various parties and adopted herein;
2. Pennsylvania-American Water Company's proposals to implement the Revenue Decoupling Mechanism, Environmental Compliance Investment Charge, and pension, production, and other post-employment benefit deferral mechanisms are denied;
3. The rates set forth in Tariff Water-Pa. P.U.C. No. 5 shall reflect the Industrial and Municipal Rate Design set forth in PAWLUG Statement No. 1;
4. The rates set forth in Tariff Water-Pa. P.U.C. No. 5 shall reflect the method of allocating the wastewater subsidy set forth in PAWLUG Statement No. 1S; and
5. Pennsylvania-American Water Company shall present the results of the feasibility study for updating the company's demand study with its next base rate filing.