



COMMONWEALTH OF PENNSYLVANIA

April 5, 2024

**E-FILED**

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

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

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

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

Sincerely,

*/s/ Steven C. Gray*

Steven C. Gray  
Senior Attorney  
Assistant Small Business Advocate  
Attorney ID No. 77538

*Enclosures*

cc: Kevin Higgins  
Brian Kalcic  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

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

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: April 5, 2024**

## TABLE OF CONTENTS

I.	Introduction and Overview .....	1
	A. Description of the Office of Small Business Advocate .....	1
	B. Procedural History .....	1-2
	C. Overview of PAWC’s Filing .....	2
	D. Legal Standards.....	2
II.	Summary of Argument .....	2-4
III.	Overall Position on the Rate Increase.....	4
IV.	Rate Base .....	4
V.	Revenues.....	4
	A. Butler Area Sewer Authority(“BAS”) Mitigation Adjustment.....	4-7
	B. Borough of Brentwood Wastewater Acquisition Mitigation Adjustment .....	7
	C. Audubon Water Company Acquisition.....	7-8
VI.	Expenses .....	8
	B. Annual Performance Plan Expense (PAWC and Service Company) .....	8
	D. Employee Stock Purchase Plan Expense.....	8
	E. Stock-Based Compensation Expense – Long-Term Performance Plan Expense.....	8
	G. Payroll Tax.....	8
	Q. Production Expenses (and Request for Deferred Regulatory Accounting Treatment).....	8
	R. Service Company Executive Retirement Plan Expense.....	8
	S. External Board Expense .....	8-9
VII.	Taxes .....	9
VIII.	Rate of Return.....	9
	E. Return on Equity (“ROE”) .....	9

IX.	Rate Structure and Rate Design .....	9
	A. Cost of Service Studies .....	9
	1. Water Operations .....	9-11
	4. Allocation of AMP Costs & Administrative Cost for H2O Programs .....	11-13
	B. Revenue Allocation.....	13
	1. Water Service Revenue Allocation.....	13
	2. Act 11 Allocation.....	13-15
	D. Summary (Including Scale Back of Rates).....	15-16
X.	Alternative Ratemaking Requests.....	16
	A. Revenue Decoupling Mechanism .....	16
	B. Environmental Compliance Investment Charge .....	16
XI.	Low-Income Customer Assistance .....	16
XII.	Service Quality and Customer Service Issues .....	16
XIII.	Miscellaneous .....	16
XIV.	Conclusion .....	17-18

## **TABLE OF AUTHORITIES**

### **STATUTES**

The Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.....	1
52 Pa. Code §§ 69.261-69.267.....	13
52 Pa. Code Section 69.266 .....	13

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF  
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

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**I. Introduction and Overview**

**A. Description of the Office of Small Business Advocate**

The Office of Small Business Advocate (“OSBA”) is authorized and directed by the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50, to represent the interests of small business consumers of utility services in matters before the Pennsylvania Public Utility Commission (“Commission”).

**B. Procedural History**

On November 8, 2023, Pennsylvania-American Water Company (“PAWC” or the “Company”) filed Supplement No. 45 to Tariff Water-PA P.U.C. No. 5 and Supplement No. 47 to Tariff Wastewater PA P.U.C. No. 16 with the Commission. The rates set forth in the two Tariff Supplements, if approved by the Commission, would increase PAWC’s annual water and wastewater revenues by \$203.9 million.

On November 20, 2023, the OSBA filed a Complaint in this proceeding.

On December 22, 2023, Administrative Law Judges (“ALJs”) Christopher P. Pell and John M. Coogan issued their Prehearing Conference Order.

On January 3, 2024, a Prehearing Conference was held before ALJs Pell and Coogan.

On January 5, 2024, ALJs Pell and Coogan issued their Prehearing Order #1.

On February 1, 2024, the OSBA served the Direct Testimony of Kevin Higgins.

On February 21, 2024, the OSBA served the Rebuttal Testimony of Mr. Higgins.

On March 4, 2024, the OSBA served the Surrebuttal Testimony of Mr. Higgins.

On March 7 and 8, 2024, Evidentiary Hearings were held before ALJs Pell and Coogan.

On March 11, 2024, ALJs Pell and Coogan issued their Order on Briefs and Closing of the Record.

On March 26, 2024, the OSBA filed its Main Brief.

The OSBA submits this Reply Brief in accordance with the procedural schedule set forth in Prehearing Order #1.

**C. Overview of PAWC’s Filing**

Section I.C. “Overview of PAWC’s Filing” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

**D. Legal Standards**

Section I.D. “Legal Standards” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

**II. Summary of Argument**

For the convenience of the reader, the OSBA repeats its “Summary of Argument” as set forth in Section II of its Main Brief, below.

Based upon the OSBA revenue adjustments, the OSBA proposes an overall revenue increase of \$109,088,498 for PAWC in this proceeding. The OSBA does not oppose other revenue adjustments presented by the non-Company parties.

PAWC's request to recover \$21.6 million in annual Act 11 revenues from water customers associated with the acquisition of the Butler Area Sewer Authority should be denied.

All costs related to PAWC's acquisition of Audubon Water Company's assets should be removed from the revenue requirement in this case.

50% of the Annual Performance Plan expense should be eliminated from PAWC's requested revenue requirement.

PAWC's proposal to have ratepayers fund the Company's Employee Stock Purchase Plan ("ESPP") should be rejected.

PAWC's Long-Term Performance Plan expense should be eliminated from PAWC's requested revenue requirement.

PAWC's request for deferred accounting treatment for its production expenses should be denied.

The OSBA recommends the adoption of the Water Cost of Service Study set forth in OSBA Statement No. 1-R, Schedule KCH-12. The OSBA's Water Cost of Service Study corrects for numerous, admitted errors in PAWC's originally filed Water Cost of Service Study, and employs maximum day and maximum hour allocators that more closely align with PAWC's system performance.

PAWC and the OSBA agree that all low-income residential customer assistance program costs should be exclusively recovered from the residential class.

The OSBA recommends the adoption of the water service revenue allocation to the Company's various rate classes, which is based upon the Water Cost of Service Study set forth in OSBA Statement No. 1-R, Schedule KCH-12.



The OSBA recommends that the Act 11 wastewater subsidy allocation as set forth in PAWC’s response to OSBA 03-001.

PAWC’s proposed Revenue Decoupling Mechanism should be rejected.

PAWC’s proposed Environmental Compliance Investment Charge should be rejected.

**III. Overall Position on the Rate Increase**

For the convenience of the reader, the OSBA repeats its “Overall Position on the Rate Increase” as set forth in Section III of its Main Brief, below.

The overall position of the OSBA on PAWC’s Direct requested revenue increase is set forth in the following table:<sup>1</sup>

	<b>Total Company</b>	
	<b>Adjustment Impact</b>	<b>Increase</b>
<b>PAWC Direct Revenue Req. Increase</b>		\$203,945,911
<b><u>OSBA Recommended Adjustments</u></b>		
Annual Performance Plan Expense	(\$5,153,394)	\$198,792,517
Long Term Performance Plan Expense	(\$5,230,156)	\$193,562,362
Employee Stock Purchase Plan Expense	(\$457,009)	\$193,105,353
Service Co. Executive Retirement Plan	(\$35,106)	\$193,070,247
External Board Expense	(\$126,792)	\$192,943,455
Proxy Return on Equity	(\$61,540,957)	\$131,402,498
BASA Mitigation Adjustment	(\$19,091,395)	\$112,311,103
Brentwood Mitigation Adjustment	(\$1,309,219)	\$111,001,884
Audubon Water Acquisition Adjustment	(\$1,913,386)	\$109,088,498
<b>Total OSBA Adjustments</b>	<b>(\$94,857,413)</b>	<b>\$109,088,498</b>

**IV. Rate Base**

The OSBA is not addressing this issue in its Reply Brief.

**V. Revenues**

**A. Butler Area Sewer Authority (“BASA”) Mitigation Adjustment**

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<sup>1</sup> OSBA Statement No. 1-S, at 5, Table KCH-1-S.

In its Main Brief, PAWC argues that the BASA acquisition should be allowed into rates under certain circumstances. *See, e.g.* PAWC Main Brief, at 12-16. As PAWC acknowledges, while the Commission approved the acquisition of BASA, the acquisition is currently on appeal before the Commonwealth Court. *Id.* At the time of this writing, that appeal is still ongoing.

Consequently, the OSBA agrees with the Bureau of Investigation and Enforcement (“I&E”) that “PAWC does not own the system, and the transaction closing date, if any, is unknown.” I&E Main Brief, at 14.

As addressed in the OSBA Main Brief, PAWC agreed to an OSBA condition that the Company would move BASA rates to 1.40 times the current BASA rates *or* PAWC’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.<sup>2</sup>

In its Opinion and Order, the Commission did approve the BASA Settlement, which included the OSBA condition, that would allow PAWC to include \$228 million in rate base for the BASA acquisition. However, the Commission also approved the BASA rate mitigation plan, to which PAWC agreed, which limits the increase to BASA wastewater customers in this rate proceeding.

Because of that settlement condition, and as set forth in the OSBA’s Main Brief, the OSBA recommends setting the BASA-related revenue requirement increase at the 40% capped increase for BASA wastewater customers, or \$4,735,610, with no Act 11 revenue shift to water customers. This adjustment would decrease PAWC’s proposed revenue requirement by \$21.6 million, which is PAWC’s proposed Act 11 revenue shift related to the BASA acquisition.<sup>3</sup>

In its Main Brief, PAWC argued, as follows:

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<sup>2</sup> OSBA Statement No. 1, at 20.

<sup>3</sup> OSBA Statement No. 1, at 25. The stated impact is based on PAWC’s proposed cost of capital. The impact shown in the table above is calculated under a 9.65% proxy return on equity.

[OSBA witness] Mr. Higgins also recommends a rate mitigation adjustment for BASA if the acquisition closes, despite acknowledging that the PUC previously rejected a similar request. The Commission should reject Mr. Higgins' proposal, consistent with its decision in the Company's 2020 rate case denying an OCA recommendation to require PAWC's shareholders (rather than PAWC's water customers) to pay approximately \$16.7 million in revenue requirement relating to four wastewater systems that PAWC acquired pursuant to Section 1329.

The PUC found the OCA's proposal would violate PAWC's rights under the Pennsylvania and Federal Constitutions against taking private property without compensation, because it would force shareholders to commit investment capital to furnish safe and reliable service to the customers of the acquired wastewater systems while denying shareholders any compensation for the use of their funds. Mr. Higgins has not justified any reason for the PUC to reach a different conclusion in this case.

PAWC Main Brief, at 17 (citations omitted) (formatting added).

The OSBA mitigation proposal in this proceeding is distinctly different from the factual situation set forth by PAWC, above. The proposal offered by the OSBA does *not* "force shareholders to commit investment capital to furnish safe and reliable service ... while denying shareholders any compensation for the use of their funds." The OSBA is *not* proposing disallowance of recovery of any funds that are expended to improve the BASA systems, and the OSBA is certainly *not* proposing the *permanent* disallowance of those expended funds.

Simply put, PAWC agreed to an OSBA condition in the BASA proceeding where the Company agreed to mitigate the rate increases on BASA's customers for a limited amount of time. It is unreasonable for PAWC's current customers to have to pay the cost of that temporary mitigation. As PAWC agreed to the temporary mitigation, it is reasonable for its shareholders to treat this as a short-term cost of the acquisition of BASA, which the full realization that all costs will ultimately be fully recovered.

PAWC was, obviously, fully aware that BASA's customers would be facing a roughly 94.4% rate increase due to the acquisition. By agreeing to OSBA's settlement terms, BASA's customer obtained

temporarily relief from the entirety of the rate increase. However, the OSBA respectfully submits that PAWC, by simply assigning the costs of that temporary relief to its current customers, is improperly shifting the burden of its decisions. Furthermore, PAWC claiming that the OSBA temporary mitigation is a “taking” under the Pennsylvania and Federal Constitutions is simply an example of “the boy who cried wolf.” The OSBA is not advocating for any taking – the OSBA is simply recommending that PAWC stand behind its commitment to a rate impact cap without burdening its ratepayers.

In summary, the OSBA’s adjustment is effectuated by temporarily imputing revenues to the BASA system in the amount necessary to recover the BASA revenue requirement without shifting costs to non-BASA customers. PAWC can revisit this issue in its next rate case, or as I&E put it, BASA “should only be included, if at all, in the next base rate case PAWC files in which it actually owns them.” I&E Main Brief, at 28.

**B. Borough of Brentwood Wastewater Acquisition Mitigation Adjustment**

PAWC Company has agreed to remove the Brentwood revenue requirement from its claims in this case.<sup>4</sup>

**C. Audubon Water Company Acquisition**

The Joint Application of Pennsylvania-American Water Company and Audubon Water Company, at Docket Nos. A-2023-3043194, A-2023-3043196, has scheduled evidentiary hearings for April 23 and 24, 2024. If the Audubon acquisition is rejected by the Commission, or if the Commission does not issue a final order in the Audubon acquisition proceeding prior to the record closing in the instant proceeding, all costs related to Audubon should be removed from the revenue requirement in this case.

PAWC’s argument that the Company’s “revenue requirement (rate base, revenues, expenses and taxes) properly includes water or wastewater systems that PAWC expects to acquire from

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<sup>4</sup> Hearing Transcript, page 1970, lines 16-19.

Audubon Water Company” should be rejected by the Commission. Once the Commission decides The PAWC / Audubon case, that result can be addressed in the Company’s next rate case.

**VI. Expenses**

**B. Annual Performance Plan Expense (PAWC and Service Company)**

Section VI.B. “Annual Performance Plan Expense (PAWC and Service Company)” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

**D. Employee Stock Purchase Plan Expense**

Section VI.D. “Employee Stock Purchase Plan Expense” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

**E. Stock-Based Compensation Expense - Long-Term Performance Plan Expense**

Section VI.E. “Stock-Based Compensation Expense - Long-Term Performance Plan Expense” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

**G. Payroll Tax.**

Section VI.G. “Payroll Tax” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

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

Section VI.Q. “Production Expenses (and Request for Deferred Regulatory Accounting Treatment)” of the OSBA’s Main Brief is incorporated by reference herein as if fully set forth herein.

**R. Service Company Executive Retirement Plan Expense**

PAWC’s rebuttal testimony stated that the Company would remove the SERP expense from the revenue requirement.

**S. External Board Expense**

PAWC's rebuttal testimony stated that the Company would remove the External Board expense.<sup>5</sup>

## **VII. Taxes**

The OSBA is not addressing this issue in this Reply Brief.

## **VIII. Rate of Return**

### **E. Return on Equity ("ROE")**

The OSBA supports either the ROE of 8.45% proffered by the "I&E", or the ROE of 9.1% and capital structure proffered by the Office of Consumer Advocate ("OCA"). I&E Main Brief, at 8; OCA Main Brief, at 11.

## **IX. Rate Structure and Rate Design**

### **A. Cost of Service Studies**

#### **1. Water Operations**

Although set forth in detail in the OSBA Main Brief, it bears repeating that there were errors in PAWC's original Water Cost of Service Study ("COSS"). These errors were identified and acknowledged by the Company. *See* OSBA Main Brief, at 14-17.

For example, in response to PAWLUG 05-001, PAWC acknowledged that there was a "linking error" in the Public Authority meter count that was used as an input in the Water CCOSS. PAWC provided a revised Water CCOSS that corrected this error, as well as numerous other errors.<sup>6</sup>

PAWC also admitted to an error whereby it was a mistake to include interruptible usage in its extra capacity calculations. PAWC provided a corrected version of its Water CCOSS and fixed this error. As set forth above, PAWC also subsequently provided a further revision to its Water CCOSS in response to PAWLUG 05-001<sup>7</sup>. This latest, revised Water CCOSS corrected the error related to

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<sup>5</sup> OSBA Statement No. 1-S, at 6.

<sup>6</sup> OSBA Statement No. 1-R, at 5.

<sup>7</sup> OSBA Statement No. 1-R, at 7.

interruptible usage identified by Mr. Baudino, as well as the Public class meter count error discussed by Mr. Baudino his Direct Testimony.<sup>8</sup>

Regarding the Company's maximum day and maximum hour weightings utilized by PAWC in its base-extra capacity allocation factors, PAWC admits that it utilizes a maximum day factor of 1.4, which is calculated using the ratio of the *maximum day* to the *average day* observed in 1988, 1995, 1996, 1999 and 2003. PAWC Main Brief, at 55. In its Main Brief, the OSBA agreed with the OCA recommendation to use a maximum day extra capacity factor of 1.2 based on the actual maximum day ratios since 2011. PAWC's own Schedule G demonstrates that the Company's system-wide maximum day ratios have been trending downward over time. In the most recent ten-year period of data available, 2013-2022, the highest annual ratio is 1.16.

In support of its proposed 1.4 maximum day factor, PAWC argues that several areas within its water service operations experienced maximum day water usage more than 1.4 times their average daily usage.<sup>9</sup> *Id.*, at 55. This argument is misplaced. As demonstrated in PAWC witness Heppenstall's Exhibit CEH-2R, PAWC's water system exhibits diversity of demand, with individual areas experiencing peak daily demand on different days throughout the year. In fact, the 38 areas included in PAWC's analysis experienced peak daily demands on 29 different days in 2022, spread throughout three different seasons. PAWC's Water CCOSS is used to allocate costs to customers across PAWC's entire water system. The ratio of the maximum day usage to average daily usage for PAWC's water system as a whole was 1.13 in 2022. Since the base-extra capacity method is used to allocate *systemwide* costs, the maximum day ratios of individual areas are of little relevance.

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<sup>8</sup> See OSBA Statement No. 1, at 35-37.

<sup>9</sup> PAWC's Main Brief states that this observation pertains to 2021, however, Ms. Heppenstall's Exhibits CEH-2R and CEH-1SR pertain to 2022.

PAWC further argues that utilizing a maximum day demand factor of 1.2 would yield a diversity factor outside the range of reasonableness identified by the AWWA Manual. PAWC Main Brief, at 56. As explained in Mr. Higgins' Rebuttal Testimony,<sup>10</sup> it is inappropriate to inflate the maximum day demand factor in order to target a particular diversity factor. If PAWC does not believe that the resulting diversity factor can be explained by atypical class usage patterns, this suggests that an update to PAWC's 2013-2015 Customer Class Demand Study may be warranted. Moreover, the diversity factor is not a value to be "solved for" by substituting an inflated maximum day factor in the calculation.

The OSBA continues to recommend utilizing a maximum day factor of 1.2, which more accurately represents PAWC's system usage characteristics for the past decade than PAWC's recommended factor of 1.4. OSBA's recommendation on this subject aligns with that of OCA.<sup>11</sup>

The OCA also observes that the 2.1 maximum hour factor utilized by PAWC is based on a 1988 analysis and is 35 years out of date. OCA Main Brief, at 63-65. The OCA also recommends that PAWC should be required to update its analysis of system-wide maximum hour extra capacity demands prior to its next base rate proceeding. *Id.* The OSBA agrees with this recommendation. Although the OCA recommends utilizing a maximum hour factor of 1.5, the OSBA recommends the use of a maximum hour factor of 1.8. This maintains what is essentially a consistent, proportional scale-back of the maximum hour and the maximum day as the factors utilized by PAWC when adopting the OSBA's proposed maximum day factor of 1.2 (*i.e.*,  $1.2 / 1.4$  and  $1.8/2.1$ ).

#### **4. Allocation of AMP Costs & Administrative Costs for H2O Programs**

PAWC recovers the direct costs of the Company's residential low-income discounts from the residential class in the Company's rate design. However, in its original filing, PAWC allocated

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<sup>10</sup> OSBA Statement No. 1-R at 10-12.

<sup>11</sup> OCA Main Brief, at 61-63.



\$3,180,090 caused by the Company's Arrearage Management Plan ("AMP") and administrative costs associated with its low-income residential programs among *both* residential and non-residential customer classes in its cost-of-service studies.<sup>12</sup>

For water service, PAWC allocates \$2,031,317 for its proposed AMP and \$416,569 in Dollar Energy administrative costs among its water classes based on the historical incurrence of bad debt. For wastewater service, PAWC allocates a total of \$345,883 in AMP expense and \$70,931 in Dollar Energy administrative costs among classes within its various wastewater cost-of-service studies.<sup>13</sup>

PAWC also allocates \$315,390 in administrative costs for its H2O Grant and Discount program among water customer classes using an operations & maintenance ("O&M") factor.<sup>14</sup>

Originally, PAWC initially claimed that costs associated with its AMP are recovered in base rates from residential customers. Later, the Company acknowledged that these costs are not directly assigned to the residential class in its cost-of-service studies.<sup>15</sup>

The OSBA recommended that all the residential low-income program costs be directly assigned to the residential customer class, as these programs are not available to non-residential customers and only benefit the residential customer class.

PAWC adopted the OSBA's recommendation, and directly assigned AMP costs and residential low-income program administrative costs to the residential class.<sup>16</sup>

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<sup>12</sup> OSBA Statement No.1, at 31.

<sup>13</sup> OSBA Statement No. 1, at 31.

<sup>14</sup> OSBA Statement No. 1, at 31.

<sup>15</sup> OSBA Statement No. 1, at 31-32.

<sup>16</sup> OSBA Statement No. 1-S, at 19.

In its Main Brief, CAUSE-PA argues that it “supports PAWC’s practice of equitably allocating certain universal service program costs across all ratepayers.” CAUSE-PA Main Brief, at 20. CAUSE-PA cites to 52 Pa. Code §§ 69.261-69.267 to support its argument. *Id.*

There are two problems with CAUSE-PA’s argument. First, as CAUSE-PA acknowledges, it “recognizes that the CAP Policy Statement is not currently applicable to jurisdictional water/wastewater utilities in the Commonwealth.” *Id.* Second, as set forth in 52 Pa. Code Section 69.266, a proceeding must consider the revenue and expense impact of any proposed allocation of low-income programs. There is no record evidence that PAWC’s residential class will suffer any undue economic impact by requiring it to be solely responsible for these programs and administrative expenses.

Therefore, the OSBA respectfully requests that AMP costs and residential low-income program administrative costs be solely assigned to the residential class.

## **B. Revenue Allocation**

### **1. Water Service Revenue Allocation**

As set forth in the OSBA’s Main Brief, OSBA witness Higgins recommended a higher increase to the Public (Municipal) class and a lower increase to the Commercial class. PAWC witness Mr. Rea stated that PAWC is not opposed to higher increases for the Municipal class with offsetting decreases to other customer classes. OSBA Main Brief, at 19.

Furthermore, as set forth in the OSBA’s Main brief, OSBA witness Kevin Higgins made a series of corrections to the Company’s original Water COSS. The OSBA’s recommended revenue allocation is based upon Mr. Higgins’ revised Water COSS and is set forth in Schedule KCH-12, which is attached to the OSBA’s Main Brief.

### **2. Act 11 Allocation**

As addressed in the OSBA Main Brief, PAWC provided a corrected allocation of Act 11 revenue among water classes in discovery response OSBA 03-001 that is based on the corresponding wastewater classes that give rise to the Act 11 revenue shortfall.<sup>17</sup>

If the Commission approves the recovery of a portion of the wastewater revenue requirement from PAWC's water customers in this proceeding, the OSBA recommends the approach provided by PAWC in response to OSBA 03-001 as a reasonable means of allocating the Act 11 subsidy among water classes, as updated for the Act 11 subsidy level and cost-of-service studies ultimately approved in this case. OSBA Main Brief, at 20.

Other parties recommended different approaches to Act 11 subsidy allocation, with the OCA and Cleveland-Cliffs Steel<sup>18</sup> recommending that the Act 11 subsidy be allocated among water classes based on the results of the water cost-of-service study. OCA Main Brief, at 71; Cleveland-Cliffs Steel Main Brief, at 3-6. As Cleveland-Cliff Steels argues, the Commission should "require the Company to maintain its current practice of allocating any subsidy approved by the Commission based on the underlying water cost of service percentages from PAWC's CCOSS." Cleveland-Cliffs Steel Main Brief, at 5.

In the OSBA's Main Brief, this Office pointed out the legal problem with the OCA and Cleveland-Cliffs Steel methodology – it transforms wastewater costs into water costs, and then those "transformed" wastewater costs are allocated based upon PAWC's Water COSS. Cleveland-Cliffs Steel's Main Brief readily admits that. Such a "transformation" violates the plain language of the statute. Specifically, Section 1311(c) explicitly uses the word "allocate" – not "transform" or "change." The OSBA acknowledges the legal issue that the Commission has latitude in interpreting its statutes.

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<sup>17</sup> OSBA 03-001 is attached to this Main Brief for the convenience of the reader.

<sup>18</sup> Cleveland-Cliffs Steel Statement No. 1, at 8-9.

However, the Commission has no authority to change the words of those statutes, to change the meaning of those statutory words in any fashion, and the word “allocate” does not include the ability to transform wastewater costs into water costs.

As also addressed in the OSBA’s Main Brief, such a transformation of wastewater costs into water costs so that a Water COSS can be applied to wastewater costs violates the Commonwealth Court’s decision in *Lloyd*. The Commonwealth Court held that the cost of service was the polestar of setting rates. Consequently, if a utility’s cost of service is the polestar, then PAWC’s Wastewater COSS and Water COSS must stand alone. Transforming wastewater costs into water costs violates *Lloyd*.

Once again, if the Commission approves the recovery of a portion of the wastewater revenue requirement from water customers in this case, OSBA recommends that the allocation approach in PAWC’s response to OSBA 03-001 conforms to the requirements of Section 1311 of the Public Utility Code, and is a just and reasonable result for this issue.

**D. Summary (Including Scale Back of Rates)**

In the likely event that the Commission approves a lower revenue increase than that requested by PAWC, the OSBA recommends that the decrease be applied primarily to water rates. If the Commission approves a lower revenue requirement increase associated with PAWC’s wastewater systems than proposed by PAWC, the incremental revenue requirement reduction should not reduce PAWC’s proposed wastewater rates, so long as the cost-based wastewater revenue requirement is greater than PAWC’s proposed wastewater rates. This means that a lower revenue requirement will reduce Act 11 revenues and PAWC’s proposed water rates generally.<sup>19</sup>

Regarding water rates at a lower revenue requirement, the OSBA recommends scaling-back the revenue allocation to each customer class in proportion to each class’s share of the total non-Act 11

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<sup>19</sup> OSBA Statement No. 1, at 36-37.

revenues shown in Mr. Higgins' Schedule KCH-12, page 1. OSBA also recommends that each water class recover its allocated share of any approved Act 11 subsidy. The reasoning for this recommendation is straight-forward: it fixes the admitted errors in PAWC's originally-filed Water COSS; it employs more reasonable and accurate maximum day and maximum hour allocators; and it will recover the Act 11 subsidy allocated to each water class.

**X. Alternative Ratemaking Requests**

**A. Revenue Decoupling Mechanism**

Section X.A. "Revenue Decoupling Mechanism" of the OSBA's Main Brief is incorporated by reference herein as if fully set forth herein.

**B. Environmental Compliance Investment Charge**

Section X.B. "Environmental Compliance Investment Charge" of the OSBA's Main Brief is incorporated by reference herein as if fully set forth herein.

**XI. Low-Income Customer Assistance**

The OSBA is not addressing this issue in its Reply Brief.

**XII. Service Quality and Customer Service Issues**

The OSBA is not addressing this issue in its Reply Brief.

**XIII. Miscellaneous**

The OSBA is not addressing this issue in its Reply Brief.

#### **XIV. Conclusion**

Wherefore, the Office of Small Business Advocate respectfully requests that the ALJs and the Commission:

- Award PAWC an overall revenue increase of no more than \$109,088,498;
- Deny PAWC's request to recover \$21.6 million in annual Act 11 revenues from water customers associated with the acquisition of the Butler Area Sewer Authority;
- Remove all costs related to PAWC's acquisition of Audubon Water Company's assets from the revenue requirement in this case;
- Eliminate 50% of the Annual Performance Plan expense from PAWC's requested revenue requirement;
- Reject PAWC's proposal to have ratepayers fund the Company's Employee Stock Purchase Plan;
- Eliminate PAWC's Long-Term Performance Plan expense from PAWC's requested revenue requirement;
- Deny PAWC's request for deferred accounting treatment for its production expenses;
- Adopt the Water Cost of Service Study set forth in OSBA Statement No. 1-R, Schedule KCH-12;
- Order that all low-income residential customer assistance program costs shall be exclusively recovered from the residential class;
- Adopt the water service revenue allocation to the Company's various rate classes as set forth in OSBA Statement No. 1-R, Schedule KCH-12;
- Adopt the Act 11 wastewater subsidy allocation as set forth in PAWC's response to OSBA 03-001;

- Reject PAWC’s proposed Revenue Decoupling Mechanism; and
- Reject PAWC’s proposed Environmental Compliance Investment Charge.

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray

Senior Attorney

Assistant Small Business Advocate

Attorney I.D. No. 77538

For:

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Small Business Advocate

Date: April 5, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: April 5, 2024

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