

COMMONWEALTH OF PENNSYLVANIA



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April 5, 2024

Via Electronic Filing

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:

Attached for electronic filing with the Public Utility Commission (Commission), please find the Office of Consumer Advocate's Reply Brief **PUBLIC** version in the above-referenced proceeding.

Please note that the **CONFIDENTIAL** version of the OCA's Reply Brief will only be sent to the parties that have executed the non-disclosure agreement as indicated on the Certificate of Service. The **CONFIDENTIAL** version of the OCA's Reply Brief will be e-filed using the Commission's SharePoint file process.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
 : Docket Nos. R-2023-3043189 (Water)
 v. : R-2023-3043190 (Wastewater)
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I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission’s electronic filing system.

Dated this 5th day of April 2024.

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Dated: April 5, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

PUBLIC VERSION

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I. INTRODUCTION AND OVERVIEW

A. Legal Standards (Burden of Proof)

In PAWC’s Main Brief, there are three citations regarding burden of proof that are inaccurate or misleading. First, PAWC cites *Pa. PUC v. UGI Utilities, Inc. - Electric Division*, R-2017-2640058 (Order Oct. 25, 2018) (*UGI 2018*), affirmed by *McCloskey v. Pa. PUC*, 225 A.3d 192 (Pa. Cmwlth. 2020) (*McCloskey 2020*), to state that Section 315(a) “cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing.” PAWC omits critical context as the full quote from the Commission order is that Section 315(a):

[C]annot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments, *the burden of proof must be on the party who proposes a rate increase beyond that sought by the utility.*

UGI 2018 at 8 (citations omitted) (emphasis added).

Second, PAWC states that Section 332(a), 66 Pa.C.S. § 332(a), establishes a burden of proof separate from that in Section 315 for those entities that propose a rule or order, falsely implying that parties other than PAWC carry the burden of proof in this proceeding. Notably, however, PAWC does not apply or cite Section 332(a) anywhere else in its Main Brief. The Commission should not be misled by PAWC’s incomplete and inaccurate standard. The burden of proof in this case *is squarely* upon PAWC with regard to all elements of its rate claims. 66 Pa.C.S. § 315. When determining just and reasonable rates, the Commission “shall consider...the efficiency, effectiveness and adequacy of service of each utility.” 66 Pa.C.S. § 523. The Commission can order improvements to service as a condition of any rate increase. *Pa. PUC v. Pennsylvania Gas & Water Co.*, 74 PUR4th 238, 244-45 (Pa. PUC 1986) (*PG&W 1986*); *Pa. PUC*

v. Philadelphia Gas Works, 2000 Pa. PUC LEXIS 876, *41-44 (Order Nov. 22, 2000) (*PGW 2000*).

The Commission can direct the adequate, reasonable, safe, sufficient service and standards of service to be observed and furnished by the utility. 66 Pa.C.S. §§ 1504, 1505.

Finally, PAWC cites to *U.S. Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983) (*U.S. Steel*), for the following statement contained in its Main Brief: “Rejecting evidence contrary to a public utility’s position is not an impermissible shifting of the evidentiary burden.” PAWC M.B. at 4. Notably, PAWC does not provide a page cite for that sentence because it cannot; nowhere in that case does the Commonwealth Court discuss the burden of proof under 66 Pa.C.S. § 315(a) or the shifting thereof. Rather, in *U.S. Steel*, the Court made very important holdings and observations that are applicable in this case. First, the Court recognized the Commission’s position that, while cost of service is an important basis of rate structure, “it is not the only consideration” and other “non-cost factors such as the ability of various customer classes to pay, ability to pass on the utility costs, and value of service, should be taken into consideration.” *U.S. Steel* at 690 (internal quotations omitted). Next, the Court recognized that the Commission “is not duty-bound to follow mathematical formulas” in determining just and reasonable rates, and that the Commission has “the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.” *Id.* at 691-92 (internal quotations omitted) (emphasis added). Finally, the Court in *U.S. Steel* stated that from its review of prior cases the following “doctrinal principles of rate structure” emerge:

(1) that a prior rate is not res judicata on the question of discrimination or reasonableness;

(2) that mere differences in rates between classes of customers does not establish unreasonable discrimination, and

(3) that the agency with the power to fix rates is invested with a flexible limit of judgment.

Id. at 692 (internal quotations omitted) (emphasis added).

II. SUMMARY OF ARGUMENT

Given page limitations, the OCA refers to its summary of argument contained in its Main Brief. OCA Main Brief at 9-12. Nothing in the other parties' brief changes the OCA's argument or position.

III. OVERALL POSITION ON RATE CASE

In its Main Brief, PAWC makes a failed effort to sell its \$204 million rate request as prudent moderation with little rate impact. It states that it "is keenly aware of the costs of investment that are reflected in the proposed rates for customers in this proceeding" and "despite the [over] \$1 billion that PAWC plans to invest in its systems, the average residential water customer will only pay approximately 2 cents per gallon under PAWC's proposed rates, or about \$2.90 per day for *all* their water needs for drinking, cooking, cleaning and sanitation." PAWC M.B. at 8-9 (citing to PAWC St. 15R at 4). Further, PAWC states that for qualifying customers, PAWC is proposing to expand its low-income bill discount program (BDP), in addition to its recently approved Arrearage Management Program (AMP). PAWC M.B. at 9 (citing PAWC St. 10 at 23-26).

PAWC emphasizes that customers will be paying for the claimed \$1.267 billion in infrastructure investment. However, as stated in the OCA's Main Brief, apart from the claimed \$1.267 billion in infrastructure investment, which the OCA has not challenged, PAWC requested an excessive and unnecessary rate increase in this case driven by its *unreasonable* requests on: (1) rate of return, (2) rate base claims related to systems that PAWC does not yet own, and (3) alternative ratemaking mechanisms that will further increase consumers' rates in unknown quantities beyond PAWC's claimed revenue increase. Utility consumers, who ultimately pay the

revenue requirement to the utility, must pay enough, *but no more than is necessary*, to ensure that service remains adequate, reliable, and safe while allowing the utility to have the opportunity to recover its costs and earn a fair rate of return on its investments. 66 Pa.C.S. § 1301, 1501; *Bluefield Water Works and Improvement Co. v. Public Serv. Comm'n of W.Va.*, 262 U.S. 679, 692-93 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Permian Basin Area Rate Cases*, 390 U.S. 747, 794-95 (1968) (*Permian Basin*). The OCA's litigation position provides a more balanced approach that results in less onerous bill impacts while permitting a reasonable opportunity for investors to earn a reasonable return on prudent and reasonably certain capital investments. OCA St. 1SR at 15. The OCA's position also recognizes that there is work to be done on specific service quality and customer service issues. *Id.* at 15.

PAWC's statement about being "keenly aware" of the impact of its filing on consumers downplays the impact of its choices in this case on consumers and falsely implies that water service at PAWC's rate relief request is affordable and just and reasonable. However, *consumers do not pay for their water service by the day or by the gallon; they pay their water bill by the month.* PAWC has water customers who are struggling to pay their monthly utility bills because of the burden of their total utility bills yet they do not qualify for PAWC's bill discount program (BDP) or other assistance programs. OCA M.B. at 31 (citing OCA St. 1 at 5, 12-20, CMH-1, CMH-2). The current utility bills at a "typical" level¹ far exceed the amount estimated by ALICE (Asset Limited, Income Constrained, Employed) for the cost of utilities for a household of four in Pennsylvania (\$292 per month) and is even higher using the proposed Water and Wastewater bills. OCA M.B. (citing OCA St. 1 at 17-18).

¹ The "typical" usage used in the current PAWC rate case notices would likely understate the bills for a 4-person household. OCA St. 1 at 16.

Additionally, PAWC's focus on the *average customer* is akin to PAWC's flawed focus on assessing affordability based on median household income (MHI).² Beginning in 2023, households in the Second Quintile were experiencing Bill-To-Income (BTI) ratios exceeding the 2% demarcation on affordability of service; the implication of the data means that at least 40% of PAWC's residential customers face a BTI Ratio exceeding the affordable 2% mark. OCA St. 5 at 45, OCA St. 5SR at 3-4. While PAWC's non-opposition to recommendations from OCA witness Colton and CAUSE-PA witness Geller (PAWC St. No. 15R, p. 6) to expand the BDP should help more customers who qualify and are enrolled in the program, the expansion of a BDP does not offset the overall increase that customers will face in this rate case. OCA St. 1SR at 16. Moreover, many eligible customers are not enrolled in the BDP and many more are struggling to pay their bills yet make too much to qualify. OCA St. 1 at 5, 12-20, CMH-1, CMH-2. PAWC's frequency of rate filings takes a toll on low-income and other vulnerable customers who do not qualify for the BDP, AMP, or other programs. OCA St. 1SR at 16.

Further, while PAWC asserts it is "keenly aware" of the *average customer's water needs*, it does not define the term "water needs." Presumably PAWC is referring to PAWC witness Everett's definition of "Basic Water Service" as "as the "service that is necessary and reasonable to meet basic household needs for drinking, cooking, sanitation, and general health service that does not include seasonal discretionary water use." PAWC St. 1 at 11. However, PAWC makes no effort to identify what water is needed for drinking, cooking, sanitation, and general health service, let alone to assess which of those uses are "necessary and reasonable to meet basic household needs" and further does not rely on standards or metrics to determine what water service is

² As discussed further in OCA's Main Brief in Section XI, and further below in Section XI of this Reply Brief, the OCA disagree with PAWC's affordability analysis.

“necessary and reasonable.” OCA St. 5 at 27-28. In addition, PAWC’s affordability analysis does not consider Ms. Everette’s definition of “basic water and/or wastewater service” – rather the affordability analysis assumes 40 gallons per person per day (gppd), which is an invalid assumption for the reasons document by OCA witness Colton, OCA St. 5 at 29-35.³

Finally, although PAWC claims to be “keenly aware” of the impact of its case on consumers based on the cost per day and per gallon measurement, PAWC M.B. at 8-9, the Commission should consider the sworn Public Input Hearing testimony, showing that PAWC is out of touch with its consumer and their interests. Below is a high-level summary of consumer and legislator testimony regarding PAWC’s case, condensing 1,800 pages of transcript pages from the Public Input Hearings; these consumer voices speaking on the subjects of affordability, the proposed revenue decoupling and environmental surcharge, the Act 11 shift and acquisitions, as well as the request for a management performance adder are representative of the many who testified.⁴ These voices stand in stark contrast to PAWC’s assertion of its keen awareness of its customers’ interests.

³ PAWC’s assumption of 40 gppd would allow a person to use the toilet (14.2 gppd), take a shower (11.1 gppd), and use a home’s faucets (11.1 gppd), but would not allow that person to wash their clothes (9.6 gppd). Even if one were to exclude “leaks” from the discussion (7.9 gppd), a usage of 50.7 gppd is aligned with authoritative estimates of average consumption per person per day. OCA St. 5 at 31-32, 34-35. Additionally, PAWC’s assumption of 40 gppd yields a monthly consumption of 1,200 per person per month; however, PAWC’s own usage data does not support that conclusion that basic water service is equal to this amount. OCA St. 5 at 32-34. Furthermore, the assumption of 40 gppd is lower than (1) the 58.6 gallons/day average daily indoor water use published by the Water Research Foundation in 2016, (2) the 53 gallons per day used by the EPA for average indoor water use, (3) actual usage by its customers during winter months, where outdoor usage is expected to be low, and (4) the 50 gallons per day stated as basic water service in academic literature relied upon by PAWC. OCA St. 5 at 30-35.

⁴ The OCA presents that summary here in this Reply Brief in response to PAWC’s assertions at pages 8-9 of PAWC’s Main Brief. A portion of this summary was attached to the OCA’s Main Brief as Appendix B Executive Summary. The OCA is not being redundant by including this summary here in its Reply Brief. Subsequent to the parties filing their Main Briefs, counsel for PAWC raised an informal objection via e-mail with the ALJs requesting that the OCA’s Appendix B be stricken from the OCA’s Main Brief. The OCA opposed PAWC’s request for relief on various grounds. The ALJs notified the parties in an e-mail that they would not consider the OCA’s Appendix B Executive Summary in writing their recommended decision.

Affordability/ Consumers' Conservation Efforts to Save Money on Bills

Mark Tortorice, President of the Port Vue Borough Council, testified regarding affordability and how he wasn't sure how families were expected to come up with another "\$1,200, \$1,500 bucks a year." Tr. 142. Debra McCarthy-Arnone, testified that members of AARP cannot afford PAWC's proposal. Tr. 181. Lissa Ludinich, a PAWC customer, testified regarding residents' inability to afford these rate increases. Tr. 242. Michael Zrenchak testified on behalf of Liberty Borough concerning affordability and stated that at some point "it's not going to be affordable to anyone." Tr. 258. David Deliman, a PAWC customer appeared and testified expressing concern that he wouldn't be able to afford these rate increases. Tr. 297.

Julian Thomas testified concerning the affordability of sewer bills for low-income families. Tr. 300. Patricia Humenik testified and described the rate increase as awful that as the sole provider for her family, she is scared to retire because she doesn't know how they will afford to live. Tr. 310. Representative Bridget Kosierowski testified that she was concerned about her constituent's ability to afford the rate increase. Tr. 406-08. John Borer testified that between water and his other bills, it is becoming unaffordable. Tr. 538. Lee Morgan testified that people cannot afford the water. Tr. 557.

Janet Brier testified that 19.8% of Dunmore's population is over 65 but cannot afford the cost of living today. Tr. 613. Paul Miller testified on behalf of himself that he is not sure how he will be able to afford this requested increase. Tr. 653-54. Senator Judy Schwank appeared and testified on behalf of her constituents stating that she has concerns about affordability. Tr. 790. Amanda Johnsen testified regarding affordability. Tr. 800. She also discussed how her family has cut back on water usage so that they can afford the bill by doing things such as being militant about shower and sink usage, not utilizing the kiddie pool, and not using the house to water plants. Tr. 800-04. Priscilla Gentry testified that both her and her husband are retired and that her water bill

is now unaffordable. Tr. 815. Ms. Gentry also discussed the extreme water conservation methods she has been taking to attempt to lower her bill such as shutting off the water while in the shower, and only flushing toilets when necessary. Tr. 817.

Keith Sauer testified that he disputes that the bills are affordable and stated that they may seem affordable but that is because customers are forced to prioritize PAWC bills over other expenses. Tr. 823. Judith Kraines testified that she was concerned people would not be able to afford this increase and the ripple effect that it would cause. Tr. 845-47. Karen Robert testified that she doesn't know how to make these rates more affordable and that the rate increase has her concerned. Tr. 850-51. Terence Reilly testified that the people of Exeter township can no longer afford their water. Tr. 904. Ruth Benderoth discussed how it was a challenge for her to make her bill every month and that the rates are unsustainable. Tr. 921. Ms. Benderoth also testified that just because people can afford their bill does not mean that they are affordable. Tr. 916. Furthermore, she discussed the water conservation measures her family undertakes. Tr. 914-16.

David Shirey testified that he wasn't sure if he'd be able to afford the proposed increase. Tr. 929. Victor Rodriguez testified that the water and sewer bills are making it hard to provide affordable housing. Tr. 1237. Gary Iorfido testified that members of AARP cannot afford the proposed increase and that older Americans are having to choose between groceries or affording water service. Tr. 1586. Carla Seidel testified that the bills are not sustainable and out of line with what households can afford. Tr. 1874. Malisa Migliori testified that the costs of sewer are a big concern for the Borough of Port Vue. Tr. 153.

Sheila Jones testified that the cost of water from PAWC has become exorbitant. Tr. 869-70. Mike Cortazzo testified opposing the rate increase, and voiced concerns over the cost of PAWC bills. Tr. 908-12. Jeronimo Hernandez testified regarding the high cost of his water and wastewater

bill, and how he has to plan to leave the area due to high water bills. Tr. 1372. Christopher Paone stated that the massive rate increases are burdensome to ratepayers. Tr. 446. David Phaneuf Sr. stated that the proposed increase was “burdensome and excessive”. Tr. 503.

Bill Gaughan stated that the proposed rate hike threatens to place additional burdens on stretched incomes, and that it is outrageous to see a utility provider place a financial strain on families struggling to make ends meet. Tr. 608-09. Glenna Piho stated that the bill is a huge burden, and she is concerned for families on fixed incomes. Tr. 895-96. Andrew Kingsbury requested that the rate increase be rejected. Tr. 1100. Richard Brill requested that the rate hike be rejected, and if possible, a rebate issued for last year’s increase. Tr. 536. George Bell III requested that the rate increase be rejected outright, or at least be tempered. Tr. 1013.

Senator Katie Muth urged the Commission to reject the rate increase. Tr. 1796. Thomas Miller requested that the Commission wholly deny the rate increase and bring rates down to what other Pennsylvanians are paying. Tr. 1823. Eva Siarniak discussed how the last rate increase should be reversed. Tr. 718. Lee Spindler requested that the increase be denied, and a reduction given instead. Tr. 640. He also discussed the water conservation efforts he has taken such as reduced flushing of his toilets. Tr. 640. Richard Knapick discussed how he has had to cut back on showers as well as showers at the local gym because he can’t afford a 4,000-gallon water bill, and that he can no longer afford to have a garden. Tr. 194-95.

Kathleen Schwartz discussed how she has cut back on her usage by giving up things such as pressure washing her sidewalk and growing a garden. Tr. 808. Mary Tanealian discussed her drastic measures to reduce her water usage such as reduced bathing, flushing of toilets less often, and not filling up the baby pool. Tr. 451-52. 45. Patricia Finley testified that she has worked hard to reduce her consumption as much as much as she can. Tr. 1036-37. Tracy Rutherford discussed

how her family has attempted to reduce water usage to reduce her bill such as swapping out their new washing machine for a HE model. Tr. 1705-07. Shaun Keperling discussed the extreme conservation measures his family has taken such as not watering plants, showering at fitness centers, and modifying toilets to use less water per flush. Tr. 1800-01.

Diane Michalowski discussed the efforts she has taken in an attempt to conserve water, such as reducing toilet flushing. Tr. 812. Alicia Shusset discussed her water conservation attempts such as using an electric tea kettle to heat water to avoid unnecessary running of water, limiting showers to five minutes, limiting toilet flushing, and water plants with the water from her cat's bowls. Tr. 836-38. Michael Knoll discussed his attempts to conserve water in order to bring the water bill down such as joining a fitness club to shower, reduced toilet flushing, and not washing his car. Tr. 900. Shawn Schower testified that his family has been conserving water, such as shutting off water as they wash hands, saying no to pool days, and not flushing the toilet three times, but that his bill was still \$340. Tr. 951-52. Eva Ross discussed that despite her best conservation efforts, such as installing special shower valves, not running water while brushing teeth, and limiting showers to two minutes, her bill keeps increasing. Tr. 1043.

Michelle White discussed the water conservation efforts her family has taken such as reducing toilet flushing, shorter showers, and less pool usage in an attempt to lower her bill. Tr. 1090-91. Kendra Robinson discussed the water conservation efforts she has had to take due to her high-water bills such as reduced shower time, no longer washing cars, and installing low flow faucets. Tr. 1268-69. Joli Harrington testified that she conserves water but is still concerned with the increasing rates. Tr. 1356. Jeronimo Herandez testified that he conserves water and is already down to half of what normal usage is and isn't sure how much lower he can go. Tr. 1375-76. Dominick York testified that he attempts to conserve water. Tr. 1396.

Revenue Decoupling Mechanism (RDM)

Malisa Migliori, when asked about the RDM, asked how it works and that she does not think that it is fair or reasonable. Tr. 164 Mary Tanealian, when asked about being forced to share back some of her bill savings due to the RDM stated “I would not be happy. They have enough.” Tr. 457-59. David Bergerhoff in his testimony expressed confusion regarding the RDM. Tr. 579-80. Fay Franus in her testimony stated that she did not think the RDM was fair. Senator Judy Schwank testified that she opposed the RDM and asked that it be explained better if possible. Tr. 790-94.

Amanda Johnsen in her testimony expressed that she opposed the RDM stating on cross examination that “I think it’s horrible. We all are – we don’t all live under rocks and we see what their executives and CEOs make on an annual basis in both salary, as well as bonuses, and that money is coming directly out of this community’s pocket.” Tr. 804. Priscilla Gentry testified that she opposed the RDM. On cross examination Ms. Gentry stated, “I think it’s disgusting” when asked her thoughts on the RDM. Tr. 819. Ron Foy, in his testimony stated that the RDM was “legalized price fixing. At the end of the day, it’s you win/we lose, we lose/we lose.” Tr. 829. Alicia Shussett testified that it was maddening that her efforts to conserve could backfire due to the proposed RDM. Tr. 836-38. Dorothy Pfeffer discussed in her testimony that she opposed the RDM stating that “And the winter rate is supposed to provide us a break, but then you’ve got that decoupling fee in there that means if you’re cutting us a break here, you’re going to catch us on the back end.” Tr. 855-56.

Michele Datko spoke against the proposed RDM in her testimony stating that “If we purchase new appliances and change our habits, we are in danger of contributing to the institution of the revenue decoupling charge. So there’s no award for saving money. And that’s just personally disheartening for my budget.” Tr. 882. Ruth Benderoth discussed the water conservation methods

her family takes and stated that the “request to uncouple sewage and water billing be denied.” Tr. 914-16. 13. Steve Rimby testified in opposition to the proposed RDM, when asked on cross examination stated “I think it sucks. . . . If I’m spending the time and money to go out and buy aerators or do this improvement or that improvement, and then they’re going to punish me for it?” Tr. 926-27. David Shirey, stated his opposition to the RDM stating, “But I mean, I don’t know what we can do, you know, with this decoupling.” Tr. 929. Cindy Murphy testified in opposition to the RDM and discussed how the RDM leaves her no options to reduce the costs of her bill stating, “I have no options to reduce my cost because, one, even though I practice conservation regularly and always have, the planned revenue decoupling mechanism will just revert any of my savings back to PAW.” Tr. 1031.

Eva Ross stated that the RDM was alarming stating that “it penalizes customers for saving water through imposed surcharges.” Tr. 1045-46. Michelle White testified on cross about the proposed RDM “It’s horrible. And the kicker, [it’s] not even drinkable water.” Tr. 1094. Matthew Heligen, when asked about the RDM on cross examination stated, “It’s terrible.” Tr. 1106. Daniel Skvarla stated that he was not aware of the RDM, but that he did not think it was reasonable. Tr. 1154. Kendra Robinson characterized the proposed RDM as ludicrous. Tr. 1275.

Kathleen Townsend discussed how with the proposed RDM if you try to conserve it feels like you are getting punished. Tr. 1286. Jeronimo Hernandez stated that he was not aware of the RDM, but when explained, described it as “frankly ridiculous.” Tr. 1375-76. Gary Iorfido, in his testimony, discussed how the RDM creates a disincentive to conserve water because not being able to reduce costs by lowering water usage seems “counter productive.” Tr. 1592. Tracy Rutherford discussed how she was alarmed to learn of the RDM and that she may now have to pay a bill based on what the Company determines it needs to meet financial goals rather than what was actually

used. Tr. 1708. Michael Knoll discussed how the proposed RDM could counteract his attempts to bring his water bill down via conservation and stated “You feel so good that you figured out how to deal with these high water rates. And you’re also more aware of this precious resource, only to find out that you’re going to get kicked in the stomach again.” Tr. 900.

Shawn Schower voiced his opposition to the proposed RDM and stated “If we actually do conserve, we could actually pay more. And that’s sort of sickening.” Mr. Schower questioned how the RDM was “even legal.” Tr. 953-55. Patricia Finley stated in her testimony that “I’m concerned that we’ve done everything we can to reduce our consumption and now they’re talking about being able to add a surcharge because they think my household doesn’t use enough water. So how can I manage my finances.” Tr. 1036. She further said that the ECIC and RDM, that PAWC “will be able to charge for these additional fees without getting PUC approval and [we] will lose our ability to attempt to reduce our bills.” Tr. 1037. When asked further about the RDM Ms. Finley stated I think it’s horrible . . . I’m doing everything I can to conserve water and they’re going to just sock it to me anyway.” Tr. 1037.

Environmental Compliance Investment Charge (ECIC)

Mary Liebert stated that it is most definitely appropriate for PAWC’s costs to be subject to review and scrutiny by the Commission and the OCA before the costs are charged to consumers. Tr. 232. Julian Thomas stated in his testimony that he opposed the ECIC as it would harm the affordability of bills for low-income households and that he thinks it is appropriate and fair for the OCA and the PUC to first review and scrutinize costs before they go into rates. Tr. 308-09. Ruth Benderoth requested that the ECIC be denied. Tr. 915-16. Daniel Skvarla discussed how she was not aware of the ECIC but that it did not seem reasonable to her. Tr. 1154. Senator Katie Muth

urged the PUC to reject the “uncapped set of fees and surcharges baked into this increased request.” Tr. 1796.

Emmanuel Paris agreed that it is appropriate for the PUC to review costs and rates before they go into rates. Tr. 179. Gary Sirois stated that he was aware that before a company can recover its costs it must file a rate request and be subject to scrutiny. Tr. 843. Mr. Sirois also agreed that this type of review and scrutiny is appropriate and should continue before the Company can recover its costs. Tr. 843. Michael Langan, when asked if review of costs and the typical rate case process is important before a company can recover costs, said “absolutely.” Tr. 1544-45. Patricia Finley said that the ECIC and RDM, that PAWC “will be able to charge for these additional fees without getting PUC approval and [we] will lose our ability to attempt to reduce our bills.” Tr. 1037.

Act 11 Shift and Act 12 Acquisitions

Debra McCarthy-Arnone testified that opposing the rate increase and specifically discussed the shifting of wastewater costs to water customers. Tr. 183. Larry Milliken testified opposing the shift from wastewater to water customers. Tr. 472. Gary Iorfido testified that it is unclear why water customers have to bear the burden of wastewater costs. Tr. 1588-89. Ron Foy discussed his opposition to Act 12 stating that “Whatever they invest there, we’ll pay for. So the increased service or the upgrade to those services that we get no benefit out of . . . It isn’t going to lower our bills in any way, but you want us to pay for it. That’s the real criminal piece of that process.” Tr. 831-32. Christopher Cappuccitti, in his testimony described Act 12 as “a horrific piece of legislation.” Tr. 860.

Andrew Kingsbury discussed on cross examination that when the Company elects to utilize Act 12, he feels it is unconscionable. Tr. 1101. Jahan Tabatabaie, stated in his testimony that “every

time American Water buys a water or sewer system, the Company burdens its existing customers to pay for its current and future purchases. Tr. 520. Elaine Sporko, in her testimony, questioned “and they can’t even provide a basic service adequately. Why are they spending money increasing – the Company, the area that they- they have to maintain?” Tr. 687. Ms. Sporko also stated that the Company is not providing quality water right now, and she agreed that the Company should slow down its growth by acquisitions and focus on providing quality water. Tr. 689. Sherri High, in her testimony, stated “I never thought that the PUC would go along with the multiple rate hikes the Pennsylvania American water asked for because they chose to overpay for acquisitions. How is that our fault to be passed on to us?” Tr. 864.

Management Performance Adder

Malisa Miglori, when asked about the proposed additional revenue for alleged prudent management, stated “And how does that seem fair?” Tr. 164. When asked if it was fair or reasonable she stated no. Tr. 164. Richard Knapick, when asked if the proposed management adder was fair or reasonable stated “Absolutely not.” Tr. 202. Lissa Ludinich, when asked about the management adder and if it sounded fair and reasonable answered “No.” and stated “We got to live with triple – triple the sewage bill versus what our water bill is. Reward for what?”. Tr. 242-433. Pauline Bryner, when asked if she felt the reward that the Company was requesting for management behaving in a prudent manner was fair or reasonable, stated “It should be illegal.” Tr. 325-26. Mary Tanealian, when asked her thoughts on the Company’s request for extra profit for prudent management, stated “I think it’s very unfair. . . . You know, we’re being billed to death down here.” Tr. 459-60. Amanda Johnsen, when asked about paying more in rates to reward the Company for doing its job in a prudent manner, stated “I think that’s ridiculous.” Tr. 805. Sheila Jones, when asked about the Company’s request for a reward of up to \$11.8 million per year for

running the Company in a prudent manner, responded “I’m not really sure how anybody could correlate this with prudence.” Tr. 874. Patricia Finley, when asked if she was aware of the Company requesting an additional reward for its prudent management, stated “I don’t think they’re managing very well, look at the cost of their rate increase.” Tr. 1040.

In summary, these testimonies demonstrate that PAWC’s asserted metric of cost per day and per gallon based on the average customer’s water needs *is not something that any of these consumers perceive or experience*. Hence, these consumer testimonies stand in stark contrast to PAWC’s opening statement in its Main Brief of its keen awareness that its \$204 million rate increase request is prudent moderation with little rate impact on consumers. Frankly, PAWC’s Main Brief opening statement presents a metric that is not used, usable, or supported by substantial evidence in this record to indicate that its rate proposals are reasonable when they are not.

IV. REVENUE REQUIREMENT – RATE BASE

A. Utility Plant In Service

In its Main Brief, PAWC states: “In light of the concerns parties have raised in this proceeding with the Company’s acquisitions that have not yet closed, PAWC has revised its request for relief to remove the Brentwood acquisition...” PAWC M.B. at 10. The OCA opposes the inclusion of the Brentwood system for all the reasons stated in its Main Brief, OCA M.B. at 22-31, and, therefore, the OCA supports PAWC’s revised position to remove the Brentwood system from its FPFTY ratemaking claims.

PAWC further states in its Main Brief that it has revised its request for rate relief “to incorporate Step 2 Rates for the BASA acquisition to ensure that customers do not pay higher rates reflecting the PUC-approved BASA ratemaking rate base until that transaction closes.” It further states that its requested revenue requirement properly includes the BASA, Audubon water,

Farmington water and wastewater, and Sadsbury wastewater acquisitions because PAWC witness Abruzzo predicts that the acquisitions are expected to close before the end of the FPFTY. PAWC M.B. at 12-13. The OCA opposes the inclusion FPFTY ratemaking claims associated with all these desired-but-not-yet-acquired systems for the reasons fully explained in its Main Brief. OCA M.B. at 22-31. As for BASA, the OCA opposes PAWC’s Step 2 Rates proposal for all the reasons stated in its Main Brief. OCA M.B. at 30-31. As explained further below, PAWC’s arguments lack merit and do not overcome the OCA’s arguments presented in its Main Brief. The OCA maintains that PAWC has not met its burden of proving with substantial evidence by the close of the record in this proceeding that the desired-but-not-yet-acquired property will be used and useful by the close of the FPFTY, and therefore the Commission should exclude such property from PAWC’s ratemaking rate base claims in the FPFTY. *UGI 2018* at 27-31, *aff’d by McCloskey 2020* at 207, n.9; *Pennsylvania Power & Light Co. v. Pa. PUC*, 516 A.2d 426, 430 (Pa. Cmwlth. 1985); *UGI Corp. v. Pa. PUC*, 410 A.2d 923, 929 (Pa. Cmwlth. 1980) (*UGI 1980*); *Philadelphia Suburban Water Co. v. Pa. PUC*, 394 A.2d 1063, 1066-67 (Pa. Cmwlth. 1978).

PAWC argues that because PAWC was permitted to include desired-but-not-yet-acquired property in its 2020 and 2022 rate cases, “there is no reason why the Commission should treat the acquisitions in this [case] any differently than it treated the acquisitions” in those cases. PAWC M.B. at 13-14. This argument is meritless. Both the 2020 and 2022 cases were resolved by “black-box” settlements,^{5,6} which need not be followed, distinguished, or overruled in the decision to be

⁵ The 2020 rate case was partially settled via a “black-box” settlement, and that partial settlement was approved in major part by the Commission. *Pa. PUC v. Pennsylvania-American Water Co.*, 2021 Pa. PUC LEXIS 55 (Order Feb. 25, 2021) (*2021 Rate Order*).

⁶ The 2022 rate case was fully settled via a “black-box” settlement by all party litigants, including the OCA, and that settlement also was approved by the Commission. *Pa. PUC v. Pennsylvania-American Water Co.*, R-2022-3031672, R-2022-3031673 (Order Dec. 8, 2022), available at <https://www.puc.pa.gov/pcdocs/1767171.pdf>.

made by the Commission in this case, as the settlements cannot be used as Commission precedent in this proceeding. As the Commission explained regarding “black-box” settlements:

Parties often disagree with the specific components of a “black-box” Settlement, and there is a give-and-take negotiation process in which one party concedes his position on one matter in order to gain an agreement on another. The negotiations continue on the contested issues among the parties until some or all of the issues have been addressed. The results of the negotiations are then incorporated into a Settlement, which may be unanimous or non-unanimous, and presented to the Commission for consideration. Whether the Settlement is unanimous or non-unanimous, it is understood that the specific cost components of a particular charge or service in the context of a Settlement, may not be the same among the parties. However, in the spirit of reaching a negotiated Settlement, the signatories to this Settlement agree with the results because each Party views the overall resulting rates, terms and conditions of the Settlement as just, fair and reasonable, and consistent with the ratemaking principles of gradualism and avoidance of rate shock to customers. Thus, the Settling Parties are willing to accept these aspects of the Settlement process, realizing, of course, that such cost components (and other terms and conditions) adopted by the Settlement cannot be used as Commission precedent in future rate case proceedings or other cases with similar issues.

2021 Rate Order at 93-94, 2021 PA. PUC LEXIS 55, *87.

For PAWC to even refer to those prior decisions in its Main Brief, PAWC breaches its contract with all parties to those settlements and violates the terms of those settlements. Indeed, the 2020 settlement stated as follows:

The Joint Petition does not establish precedent and neither the Joint Petition nor Commission approval of the Joint Petition shall be cited in other proceedings, except to enforce the Joint Petition.⁷

The 2022 settlement contained a similar provision:

The joint petition also provides that the settlement does not establish precedent and does not expressly or implicitly represent approval of any specific claim or claims made in this proceeding.⁸

⁷ See page 28 of the Recommended Decision in *Pa. PUC v. Pennsylvania-American Water Co.*, R-2020-3019369, R-2020-3019371 (R.D. Dec. 23, 2020), available at <https://www.puc.pa.gov/pcdocs/1688136.pdf>.

⁸ See pages 58 to 59 of the Recommended Decision in *Pa. PUC v. Pennsylvania-American Water Co.*, R-2022-3031672, R-2022-3031673 (R.D. Nov. 8, 2022), available at <https://www.puc.pa.gov/pcdocs/1763731.pdf>.

As black-box settlements, neither the 2020/2022 settlements nor the Commission’s Orders approving those settlements addressed the issue of PAWC’s 2020 and 2022 ratemaking claims regarding desired-but-not-yet-acquired property. Furthermore, as a matter of law, a prior rate is *not* res judicata on the question of reasonableness. *U.S. Steel* at 692.⁹ Hence, the Commission’s prior approval of the 2020/2022 black-box settlements does not tie its hands in this case on the question of rate base adjustments (or any issue for that matter). Additionally, beyond PAWC’s bald assertion that the 2020/2022 rate cases included certain acquisitions in rate base, PAWC did not develop the record in this case to explain how the desired-but-not-yet-acquired property claimed in this case is either like or distinguishable from the property claimed in the prior cases (hence, there is no testimony in the record to rely upon for comparisons/contrasts), and PAWC does not cite to any prior reasoning by the Commission in a prior cases that could be applied in this case.

In contrast, in the OCA’s Main Brief, the OCA cited a prior Commission decision – *UGI 2018* as affirmed by *McCloskey 2020* – where the Commission explained its reasoning and the basis for excluding rate base claims in the FPPTY. *UGI 2018* at 27-31 *aff’d by McCloskey 2020*, 225 A.3d at 207, n.9. While the Commission is not bound by the rule of *stare decisis*, it must render consistent opinions and should either follow, distinguish, or overrule its prior precedent. *Bell Atlantic v. Pa. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. 1994). *The Commission should follow UGI 2018 in this case*, as there is no reason to distinguish or overrule *UGI 2018* based on either the record in this case or PAWC’s Main Brief arguments.

In *UGI 2018*, the Commission properly excluded the utility’s proposed operations center and reduced the utility’s rate base by over \$17.3 million “on the basis that there was insufficient

⁹ While the Court in *U.S. Steel* stated this “doctrinal principle” in the context of rate structure, it is a principle that is generally applicable in ratemaking on the question of reasonableness, especially where a prior rate is based on a black-box settlement.

evidence to support that it would be in service during the FPFTY.” *McCloskey 2020* at 207, n.9. Like the property excluded in *UGI 2018*, the Commission should exclude the desired-but-not-yet-acquired property related to the six proposed acquisitions at issue in this case because PAWC has not met its burden of proving with substantial evidence in this record that (1) the claimed plant related to the six proposed acquisitions will be acquired and used and useful by the end of the FPFTY (but rather PAWC has merely demonstrated that the acquisitions are in preliminary planning and litigation stages); and (2) there is reasonable certainty that the property that PAWC aspires to own will actually be acquired and used and useful by the end of the FPFTY. OCA M.B. at 22-31; *UGI 2018* at 27-31; 66 Pa.C.S. §§ 315(a), (e); *Pa. PUC v. Pennsylvania-American Water Co.*, 2004 Pa. PUC LEXIS 29, *16-18 (Order Jan. 29, 2004); *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983) (*Burleson*); *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) (*Lansberry*); PAWC St. 6 at 3-22; PAWC St. 6R at 2-18; OCA St. 2 at 20-22; OCA St. 2SR at 4-2.

In its Main Brief, (even though PAWC does not acknowledge *UGI 2018*) PAWC effectively argues that the Commission should distinguish *UGI 2018* by arguing that “the Commission should take official notice of the status of the BASA, Sadsbury, Farmington, and Audubon water acquisition proceedings....” PAWC M.B. at 14. PAWC states that, with the record now closed, if a final, unappealable order gets put into place (after the record close date), “the Commission should allow the acquisition to be placed into rates, even if closing has not yet occurred...[because] the Commission can be reasonably certain that the transaction will close by the end of the FPFTY.” PAWC M.B. at 14. This argument is absurd and, if adopted, would abandon appropriate and reasonable guardrails to the FPFTY as a ratemaking concept, increase uncertainty in ratemaking, and would run afoul of party litigants’ due process rights.

While none of the acquisitions at issue in this case, including BASA, have a final, unappealable order in place as of the close of the record (OCA St. 2 at 24, 27-28, 30-32; OCA St. 2SR at 8; Tr. 1998-90), the OCA does not dispute that the Commission can take official notice of a final, unappealable order in another proceeding. 52 Pa. Code § 5.408. However, what PAWC is asking the Commission to do is to take official notice that the acquisitions at issue will close in the FPFTY – a fact that does not exist in the record – and to simultaneously adopt PAWC’s ratemaking claims related thereto without modification. According to PAWC’s position, all of its ratemaking claims related to the acquired property should be approved by the Commission in this proceeding and automatically be allowed in rates at any point in the future after the record is closed (and even after a final order is entered in this proceeding) as soon as the acquisition is approved per a final, unappealable order in a separate proceeding. This is an absurd result. As argued in the OCA’s Main Brief, whether and when an acquisition will close is *not* an absolute certainty given that a Commission order granting certificate of public convenience (CPC) authority functions as permission not a mandate for the utility to proceed with closing the transaction. 66 Pa.C.S. §§ 1102, 1103.¹⁰ As the OCA has demonstrated in this record, the parties have contractual rights that permit them to delay or terminate the asset purchase agreements (APAs) notwithstanding the existence of a final, unappealable order. OCA St. 2SR at 8-11. Even though Willistown’s APA was terminated by the seller while the Commission’s final order was on appeal, Willistown is an instructive example of the uncertainty surrounding the closing of any acquisition given the contractual rights of the buyer and sellers in these APAs notwithstanding the existence of a

¹⁰ See OCA St. 2SR at 11; *Application of Aqua Pa. Wastewater, Inc.*, A-2021-3027268 (Letter re: Termination of APA May 12, 2023) (“Based on this correspondence terminating the APA, the Transaction will not be proceeding to closing and Aqua will not be providing the Commission notice that the Transaction has closed”), available at <https://www.puc.pa.gov/pcdocs/1785100.pdf>.

Commission final order approving such transaction. OCA St. 2SR at 11-12. For ratemaking purposes, if the Commission were to allow an acquisition into rates simply because there exists a final, unappealable order, without a factual basis showing that the closing did in fact occur, it would be an error of law and abuse of discretion.

But for sake of argument, even assuming that an acquisition would close before the end of the FPFTY after a final, unappealable order exists, the parties would need to be given the opportunity to meaningfully respond to PAWC's ratemaking claims related to the acquired property. In this proceeding, by the close of the record, all the acquisitions at issue remained in litigation stages. Hence, it was premature to take litigation positions on various ratemaking claims, including but not limited to Section 1327 adjustments for Audubon and Farmington water. OCA St. 2 at 25-29; I&E St. 4 at 7-9; OSBA St. 1 at 29-30. Should the Commission take official notice of an acquisition closing after the close of the record and allow the ratemaking claims related to such property be automatically allowed in rates, it would circumvent procedural due process rights of the parties that would need to be protected by either reopening the record or giving parties the opportunity to respond to the new fact and to respond to the implications of the new fact on the party's adjustments to PAWC's ratemaking rate base and expense claims related to such property. 52 Pa. Code § 5.408; *Bethlehem Steel Corp. Bar Rod and Wire Div. v. Pennsylvania Elec. Co.*, 1990 Pa. PUC LEXIS 153, *27 (Order Oct. 23, 1990) (*Bethlehem*). It also would circumvent notice requirements owed to customers as to rate changes. As a matter of law, an increase in base rates involves a substantial property right, entitling ratepayers to notice and procedural due process. *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1068 (Pa. Cmwlth. 2018) (*McCloskey 2018*) (citing

Barasch v. Pa. PUC, 546 A.2d 1296, 1305-06 (Pa. Cmwlth. 1988) (*Barasch 1988*); citing also U.S. Const. amend. XIV, § 1).¹¹

With respect to due process owed to parties when the Commission takes official or judicial notice of facts, the Commission has held the following:

Pursuant to Section 5.408 of the Code, 52 Pa. Code § 5.408. in order for us to take official or judicial notice of evidence not part of the official record, the party(ies) adversely affected must be afforded the opportunity upon timely notice to review and comment on the material introduced.

Bethlehem at *27. While *Bethlehem* addressed a party seeking to offer new evidence in exceptions by way of judicial notice, the holding is equally applicable in these circumstances. Both official and judicial notice are intended to avoid the necessity of producing evidence where there is no need for it, but the opponent is not prevented from disputing the matter by evidence. *Bethlehem* at *27; *In re Albert's Appeal*, 92 A.2d 663, 666-67 (Pa. 1952). Here, given that the record is closed, parties to the base rate case must have an opportunity to respond to the new fact of the occurrence of an acquisition closing, the determinations of the final, unappealable order, and the resulting impact on PAWC's ratemaking claims related thereto. To hold otherwise would create an undue burden on party litigants in base rates cases to take multiple positions on the same issue in a rate case based on various steps of acquisitions being approved by the end of the FPFTY despite none of the closings having occurred on or before the close of the record in the base rate case (e.g. if "x" happens (sometime in the future after the record closes), then position is "a" on rates, if "y" happens, then position is "b" on rates, if "z" happens, then position is "c" on rates). This would

¹¹ For illustrative purposes, to apply PAWC's argument to the facts of *UGI 2018*, it would be akin to saying the utility in that case would be able to notify the Commission (after the close of the record, and after the Commission enters a final order) that its operations center was constructed and put into place by the end of the FPFTY, and the Commission could take official notice of that fact and allow the utility's rates to include the operation center in rate base (and presumably rates would increase as a result of the inclusion of the center in rate base without further notice to customers). Absurd.

increase uncertainty in ratemaking, create burdensome obstacles and disadvantages for non-utility party litigants, and ultimately not serve the public interest. To risk stating it too often, PAWC's position is absurd.

In its Main Brief, PAWC further argues that not allowing the desired-but-not-yet-acquired property to be included in its FPFTY ratemaking claims "would be bad public policy because it would create a lag in recovery on and of legitimate investment by utilities, which in turn creates a disincentive for public utilities to acquire systems (especially small or troubled systems like Audubon water)... and lead to more frequent rate cases for utilities to reduce this lag in recovery." PAWC M.B. at 15. This argument is meritless. On the issue of regulatory lag, the FPFTY is designed to reduce regulatory lag for utilities; however, for the concept to not be abused, there must be reasonable certainty by the close of the record in the rate case that the property claimed in rate base will be used and useful by the end of the FPFTY. *UGI 2018* at 27-31. A utility's management is in complete control of when it files for a rate case, and if the Commission applies *UGI 2018* here and thus requires that the targeted property be owned by closed by the close of the record in the base rate proceeding, it will create certainty and sound regulatory policy, which will aide a utility's management to better time the filing of its rate cases with the certainty of its pending acquisitions, which will ensure that consumers are not paying in rates any more than is necessary for the utility to provide adequate service and earn a fair return on its investments. Moreover, Section 1327 is an incentive for PAWC to acquire troubled systems; it is premature in this case to reach a decision on the proposed Section 1327 adjustments in Audubon Water and Farmington Water given that the evidentiary record in those separate acquisition proceedings is being developed and no findings have been adopted. OCA St. 2 at 25-29; I&E St. 4 at 7-9; OSBA St. 1 at 29-30. Finally, PAWC's assertion that the frequency of its rate cases may increase by the

Commission following its *UGI 2018* decision here rings hollow in light of the frequency of PAWC's filings. PAWC uses the DSIC and the FPFTY, and both tools were supposed to reduce rate case frequency; yet this is PAWC's third case in four years. PAWC received rate increases in March 2021, January 2022, and January 2023, even though it was allowed to include desired-but-not-yet-acquired property in the 2020/2022 rate case settlements. PAWC files rate cases when it wants and needs to do so and a decision by the Commission to follow applicable law and precedent will not speed up its decision to do so.

Finally, in its Main Brief, PAWC further argues that BASA should be included in the ratemaking FPFTY claims because Section 1329(c)(1) states: "The ratemaking rate base of the selling utility shall be incorporated into the rate base of (i) the acquiring public utility during the acquiring public utility's next base rate case." PAWC argues that based on statutory construction "next" shall mean the next case to be decided following the Commission's approval of the acquisition. PAWC M.B. at 15-16. There is one glaring problem with PAWC's position – the Commission's order approving the BASA settlement was appealed to the Commonwealth Court, and there is no date certain by which the Commonwealth Court must act. There is absolutely no certainty of when or how the Commonwealth Court will resolve that appeal. Better and more applicable statutory construction principles are found in 1 Pa.C.S. § 1932 ("Statutes in pari materia shall be construed together, if possible, as one statute") and §§ 1922(2), (5) (the General Assembly intends the entire statute to be effective and certain and to favor the public interest as against any private interest). Accordingly, Section 1329(c)(1) must be construed together with Section 315(e), and the Commission's interpretation of Section 315(e) as set forth in *UGI 2018* as affirmed by *McCloskey 2020*. Thus, there must be reasonable certainty by the close of this record that the

property claimed in rate base will be used and useful by the end of the FPFTY, and PAWC has failed to carry its burden of proving this as to the BASA property.

Once again, excluding PAWC's claims for its desired-but-not-yet-acquired plant in this proceeding does not negate PAWC's right to make a claim for the BASA plant in a future rate filing if that plant is, or is reasonably certain to be, owned and used and useful by PAWC in a test year. OCA St. 2 at 20. However, excluding such property in this case protects the public interest over private interest by ensuring that utility consumers, who ultimately pay the revenue requirement to the utility, will pay enough, *but no more than is necessary*, to ensure that service remains adequate, reliable, and safe while allowing the utility to have the opportunity to recover its costs and earn a fair rate of return on its investments. *Permian Basin* at 794-95, 797 (consumers must "rely upon" the Commission to provide "a complete, permanent, and effective bond of protection from excessive rates and charges" of the public utility; the Commission's "responsibilities include the protection of future, as well as present, consumer interests.")

Finally, as explained in the OCA's Main Brief, given that there is no reasonable certainty that the BASA and Brentwood systems will be acquired and used and useful by the end of the FPFTY, the Commission should exclude PAWC's claim for \$18.89 million in rate base additions for improvements to those systems. The reason is simple: a utility cannot add plant to a system it does not own and there is no reasonable certainty that the BASA and Brentwood systems will be acquired and used and useful by the end of the FPFTY. *UGI 2018* at 27-31; 66 Pa.C.S. §§ 315(a), (e); *PAWC 2004* at *16-18; *Burleson* at 1236; *Lansberry* at 602. Excluding the \$18.89 million in rate base additions reduces PAWC's proposed \$1.286 billion amount of plant additions net of retirements through June 30, 2025, to \$1.267 billion, an amount that represents planned

improvements to PAWC’s Water, Wastewater SSS, and CSS Wastewater Operations. OCA St. 2SR at 25-27; OCA M.B. at 32.

B. Depreciation Reserve

See the OCA’s Main Brief at 43-44.

C. Cash Working Capital

See the OCA’s Main Brief at 33.

V. REVENUE REQUIREMENT – REVENUES

See the OCA’s Main Brief at 34-35.

VI. REVENUE REQUIREMENT – EXPENSES

A. Expense Adjustments

See the OCA’s Main Brief at 35-44. The Company has not affirmatively demonstrated by a preponderance of evidence that the expenses the OCA challenges for PAWC’s Water and Wastewater are reasonably necessary to provide services, or prudently incurred. *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002); *Popowsky v. Pa. PUC*, 674 A.2d 1149, 1154 (Pa. Cmwlth. 1996) (*LP Water*). For the expenses challenged by the OCA, the Commission should exclude the Company’s claimed expenses as unreasonable and adopt the OCA’s adjustments to the expenses. OCA M.B. at 35-44.

B. Pension and OPEB Expense and Production Expense (Request for Deferred Regulatory Accounting Treatment)

In its Main Brief, PAWC argues that if the tracker had been in place between 2012 and 2022, customers would have realized a net benefit of approximately \$58 million for a pension deferral and \$46 million for an OPEB deferral. PWC M.B. at 31. PAWC’s statements downplay the impact of this tracker. First, this “netting” argument is a netting of deferred liabilities (owed to

consumers) and deferred assets (costs to consumers) under a deferred regulatory accounting treatment; meaning, it is not a netting of this expense bucket against all other fluctuations of expenses experienced by the Company (as it cannot be since PAWC is presenting a single-issue ratemaking request). However, consumers do not pay for their water service on a netting basis over a ten-year period; they pay their water bill by the month based on the rate increases that go into effect as approved by the Commission. The better and more appropriate analysis would be to see how the deferred liabilities and assets would impact rates and consumer bills over the five authorized rate increases that PAWC received in February 2021, February 2022, January 2023, December 2017, and December 2013. PAWC does not show this because most likely it cannot as it is very difficult to isolate a single expense as to rate and bill impact. Like PAWC's Main Brief opening statement regarding the cost of water faced by an average customer on a per gallon and per day basis, PAWC once again presents a metric that is not used, usable, or supported by substantial evidence in this record to indicate that its proposal is reasonable when it is not.

Isolating and tracking the Pension and OPEB expenses as well as Production costs for eventual recovery via a special rate recovery mechanism or in future base rates, runs counter to a fundamental principle of ratemaking – that a utility should be afforded the opportunity to recover its costs of providing service but not guaranteed such recovery. OCA St. 2SR at 51. This is particularly so for PAWC in this case given that the Company is utilizing a FPFTY that anticipates the Company's future costs of providing service. OCA St. 2SR at 51. Deferrals of fluctuations in one particular cost or cost category in isolation from all other cost fluctuations is by definition single-issue ratemaking because it focuses only on one cost or a single group of costs, typically where the utility expects such costs to increase, and ignores fluctuations between rate cases in other costs. OCA St. 2SR at 51.

Finally, in its Main Brief, PAWC M.B. at 33 (citing PAWC Sts. 8 at 18-19, 8R at 5-6), PAWC's attempt to bootstrap electric utility default service cost recovery and natural gas utility purchased gas cost mechanisms to apply to PAWC's production costs is off point, lacks merit, and should be rejected. OCA St. 2SR at 51-52.

VII. REVENUE REQUIREMENT – TAXES

The OCA is not briefing this issue.

VIII. REVENUE REQUIREMENT – RATE OF RETURN

A. Summary

Given page limitations, the OCA refers to its summary of argument contained in its Main Brief. OCA Main Brief at 10-11. Nothing in the other parties' brief changes the OCA's argument or position.

B. Proxy Group

As stated in the OCA's Main Brief, it is reasonable for the Commission to focus on the results of the water only proxy group. However, in this proceeding the results of the DCF model and CAPM model were not materially different between the Water only proxy group and the entire group. Therefore, as a practical matter, the OCA focused on the results of the entire group. OCA St. 3 at 10-11, Exh. DJG-12. I&E witness Patel removed the electric and natural gas utilities from his proxy group, a position that the OCA views as reasonable.

C. Capital Structure

The Company's proposed capital structure of 55.3% equity and 44.7% debt is too heavily weighted in equity and represents an additional cost to consumers of \$30.7 million per year when compared to the reasonable capital structure of 51% equity and 49% debt as proposed by the OCA. OCA M.B. at OCA St. 3 at 4, 57; OCA St. 2, Exh. LA-6 at 3-4.

In its Main Brief, PAWC argues that “[t]he Commission has made clear that a utility’s actual capital structure is to be used in rate of return analysis unless that capital structure is atypical.” PAWC M.B. at 42 (citing *Pa. PUC v. Columbia Water Co.*, 2024 PA. PUC LEXIS 23, *43 (Order Jan. 18, 2024) (*Columbia 2024*) and *Pa. PUC v. PPL Elec. Utils Corp.*, R-2012-2290697, 62 (Order Dec. 28, 2012) (*PPL 2012*)). However, this is a misstatement of the standard the Commission outlined in the *Columbia 2024* case, which states: “Absent a finding by the Commission that a utility’s actual capital structure is atypical or too heavily weighted on either the debt or equity side, we would not normally exercise our discretion with regard to implementing a hypothetical capital structure.” *Columbia 2024* at *43 (emphasis added) (citing *PPL 2012* at 68). The full standard articulated in *Columbia 2024* is more consistent with the holding of the Commonwealth Court:

Where a utility’s actual capital structure is too heavily weighted on either the debt or equity side, the commission, which is responsible for determining a capital structure which allocates the cost of debt and equity in their proper proportions, must make adjustments to the utility’s capital structure.

Carnegie Natural Gas Co. v. Pa. PUC, 433 A.2d 938, 940 (Pa. Cmwlth. 1981) (citations omitted) (emphasis added). Therefore, under the correct standard, the Commission must make adjustments to the utility’s capital structure where it is too heavily weighted toward debt or equity. The Commission can utilize a hypothetical capital structure for ratemaking purposes when the utility’s actual capital structure is “unreasonable or uneconomical when balancing the goals of safety, prudent management, and economy.” *Pa. PUC v. Carnegie Natural Gas Co.*, 54 Pa. PUC 381, 393 (1980), *aff’d by Carnegie*.

Here, as shown in the OCA’s Main Brief, the capital structure proposed by the Company is too heavily weighted on the equity side, and it is unreasonable and uneconomical, resulting in an additional \$30.7 million to be collected per year in rates, solely for the benefit of shareholders and

without any improvement in service. OCA M.B. at 49; OCA St. 3 at 57-58 ; OCA St. 2, Exh. LA-6 at 3-4. PAWC's equity is higher than the average of the Company's own proxy group, its Parent Company AWK, and comparable industries. OCA St. 3 at 55, 57. PAWC argues that utilization of the proxy group's capital structure is inappropriate, as these companies are holding companies. PAWC M.B. at 42. However, as explained in Mr. Garrett's Surrebuttal testimony, the DCF and CAPM results in this case are based on the holding companies within the proxy group, not the operating subsidiaries. OCA St. 3SR at 7. To use information from the proxy group in regard to DCF and CAPM calculations, but then cherry pick from the same companies when it comes to capital structure, is to ignore the relationship between risk and capital structure. OCA St. 3SR at 7. The fact that PAWC's proposed capital structure has less debt than the proxy groups is directly relevant to its risk level, and to separate this risk level from its capital structure is arbitrary.

In its Main Brief, PAWC argues that Mr. Garrett's application of the Hamada formula is incorrect because according to PAWC the Hamada formula requires use of the market value of debt and equity, not book value, which Mr. Garrett used. PAWC M.B. at 42-43 (citing PAWC Sts. 13-RJ at 11-2, 13R at 74). Mr. Garrett explained his usage of the Hamada formula in his direct testimony, *see* OCA St. 3 at 58-60, and several reasonable inferences can be made from that testimony that are responsive to PAWC's arguments. First, it is a fundamental concept in utility ratemaking that a utility's cost of equity is based on market values and analyses, and that the cost of equity is applied to book values of debt and equity to determine the utility's revenue requirement. Next, the Hamada model does not work how PAWC says it does: the analyst must use the same companies in the Hamada model as used in the CAPM; in other words, the models are necessarily linked in that regard. *See generally* OCA St. 3 at 58-60.

Assigning a hypothetical total Company capital structure of 51% equity and 49% debt for ratemaking purposes would move the Company's capital structure to a reasonable structure and balance the needs of investors with the interests of consumers.

D. Cost of Long-Term Debt

The OCA accepted PAWC's proposed cost of long-term debt, and the OCA's proposed modifications to the Company's capital structure do not affect the cost of debt.

E. Return on Equity

As stated in the OCA's Main Brief, the Commission should reject the Company's proposed ROE of 10.95% because it is excessive and unsupported. OCA M.B. at 51. Rather, the Commission should accept the OCA's fully supported 9.1% ROE as it represents a balance between the interests of shareholders and consumers by allowing the Company a fair rate of return while not punishing consumers by forcing them to pay an additional \$87 million per year. OCA St. 3 at 47. If the Commission does not adopt the OCA's proposed capital structure, and instead adopts the Company's proposed equity heavy structure, a proper ROE would be 8.7% in recognition of the reduced risk. OCA St. 3 at 3.

1. DCF Model

In its Main Brief, the Company attempts to obscure Mr. Garrett's DCF results by claiming that he used a higher growth rate than Ms. Bulkley. PAWC M.B. at 49-50. The Company's citation to support this alleged fact does not point to any actual discussion of the growth rates utilized by either witness. However, this attempt to discredit both Mr. Garrett's DCF Results and his critique of PAWC witness Mr. Bulkley's upwardly bias results is unfounded. Rather than making broad sweeping statements that mischaracterize Mr. Garrett's testimony, a much closer apples to apples comparison of the growth rates that were utilized by both Mr. Garrett and Ms. Bulkley can be seen

by comparing Exh. DJG-6 to Exh. 13-A Sch. 3, or the updated Exh. 13R Schedule 2 to Exh DJG-6. As can be seen in both Exh. 13R Sch. 2 and Exh. 13-A Sch. 3, the average growth rates utilized by Ms. Bulkley, 6.19% and 6.07% respectively, are higher than the average growth rate used by Mr. Garrett of 5.8%. OCA St. 3 Exh. DJG-6, PAWC St. 13, Exh. 13-A Sch. 3; PAWC St. 13R, Exh. 13R Sch. 2.

While some of the growth rates shown in both Exh. 13R Sch. 2 and Exh. 13-A Sch. 3 may be lower than Mr. Garrett's growth rates, it is of note that the Mean High ROE calculated by Ms. Bulkley, utilizing the maximum growth rates for each company, has the average which most closely tracks her recommended ROE of 10.95%. PAWC St. 13, Exh. 13-A Sch. 3; PAWC St. 13R Exh. 13R, Sch. 2. Therefore, any attempt to discredit Mr. Garrett's DCF calculations, and his critiques of Ms. Bulkley's, due to some of his growth rates being higher than some of Ms. Bulkley's is missing the forest for the trees, and ignoring the fact that the average growth rate utilized by Mr. Garrett is lower than Ms. Bulkley's average, and that Ms. Bulkley utilized the highest growth rates in her group to reach a result that most closely matches her recommendation. PAWC St. 13R Exh. 13R Sch. 2.

2. CAPM

The CAPM Results proposed by Mr. Garrett are more reasonable than the inflated upward bias CAPM proposed by the Company, and as such the Commission should adopt the OCA's proposed ROE.

As explained in the OCA's Main Brief and the testimony of Mr. Garrett, the CAPM presented by Ms. Bulkley is unreasonably high, reaching as high as 11.5% primarily due to Ms. Bulkley's use of an unreasonably high Equity Risk Premium (ERP). In the testimony of Mr. Garrett, as well as in the Main Brief, the OCA has shown how Ms. Bulkley's estimated ERP is

notably higher than the IESE Business School of Experts Survey, the estimate of Dr. Damodaran, and the Kroll estimate. OCA St. 3 at 44-46; OCA St. 3SR at 4, Exh. DJG-10; OCA M.B. at 54.

In an attempt to justify Ms. Bulkley's unreasonably high ERP, the Company points to a historic look back over the last 97 years, and a "review of 29 different market risk premium methodologies by the Federal Reserve Bank of New York which underscored that the market risk premium tends to peak during periods of high inflation" PAWC M.B. at 45, 50.¹² This justification points to the past and ignores the comparisons of Ms. Bulkley's estimate to that of other relevant experts. Furthermore, the Company has not supported the use of Ms. Bulkley's 8.12% ERP but rather has made general statements about a higher ERP in times of inflation, citing to Ms. Bulkley's Rejoinder testimony where she relies on inflation being above the Federal Reserve's target rate as a justification for her overly inflated ERP. OCA M.B. at 54 n. 26; PAWC M.B. at 50; PAWC St. 13RJ at 8-9.

Finally, in a weak attempt to rationalize the Company's proposed ROE, the Company combines I&E witness Patel's Market Risk Premium with Mr. Garrett's CAPM. PAWC M.B. at 50. The result of this CAPM analysis should be disregarded. First, this combination of the calculations by two witnesses for separate parties is results-driven, arbitrary, and cherry picking. To replace Mr. Garrett's Equity Risk Premium for that of Mr. Patel's is in essence to change the CAPM to something that Mr. Garrett did not testify to. Furthermore, this sort of results-driven analysis should be rejected by the Commission as it does nothing but arbitrarily raise results to something closer to what PAWC wishes them to be, not what the model produced them to be.

¹² Noticeably, the citation provided in the Company's Main Brief to support Ms. Bulkley's review of 29 different methodologies only mentions 20 methodologies, not 29. PAWC St. 13RJ at 10-11.

F. Business Risks and Management Performance Adder

The Company's request for up to 25 basis point adder for management performance should not be granted, as it would impose an additional \$11.8 million in costs on consumers per year for an arbitrary and unreasonable adder. OCA St. 3 at 3. That the adder is unreasonable and arbitrary, is keenly demonstrated by PAWC's Main Brief being misaligned with PAWC witness Everette's testimony as to exactly what the Company is requesting in this case. The requested management adder in the record is a sliding scale aimed at achieving the 10.95% ROE result. Specifically, Ms. Everette testified that the Company is seeking a 25-basis point management adder if the ROE is set at 10.70% or below, and if the ROE is set above 10.70% "the performance-based increment could be less than 25 basis points to achieve a final equity return rate of 10.95%." PAWC St. 1 at 33, 1R at 7. In contrast, in PAWC's Main Brief, PAWC requests "a management performance adjustment of no less than the 25-basis points proposed by Ms. Everette." PAWC M.B. at 53. The Company's request in its Main Brief does not include the limiting language to reduce the size of the adder to cap the ROE at 10.95%. At no point in the proceedings did the Company substantiate its request for either at least 25 basis points, or the sliding scale of at most 25 basis points to reach 10.95% ROE. Clearly, the Company simply wants \$11.8 million of customer's money but does not have the evidence to support the request. OCA St. 3SR at 10-11.

In PAWC's Main Brief, it argues that it has demonstrated excellent management performance in certain areas, making it deserving of an ROE bump. PAWC M.B. at 52-53. However, as stated in the OCA's Main Brief, and in the testimony of Barbara Alexander and Roger Colton, OCA St. 5 at 110-24; OCA St. 6 at 7-24, the Company's performance in customer experiences and interactions with PAWC has not merited an adder. OCA M.B. at 59; OCA Sts. 5 at 110-24; 6 at 7-24.

More specifically, OCA witness Colton discussed the evidence showing that PAWC has demonstrated less than exemplary management. OCA M.B. at 59; OCA St. 5 at 110-24. PAWC has failed to respond, and is not responding, to the issues relating to long-term arrears that have now been presented in two PUC Management Audits (2018 and 2023, pre- and post-COVID). OCA St. 5 at 110-13. The Company's pre-COVID levels of long-term arrears gave rise to the 2018 Management Audit's conclusion that "more work is necessary" and PAWC should "implement *additional strategies* to reduce customer accounts receivables more than 90 days overdue." *Id.* at 110; OCA St. 5SR at 14-15. Instead, PAWC has continued doing what it was previously doing, and its numbers reflect that.

PAWC's average 2023 long-term arrears of 29% (through October) are substantially in excess of the 2018 level of 23% and the 2019 level of 24%.

The percentage of PAWC residential billings in debt has increased from 4.4% in 2018 to 6.3% in 2022.

The PAWC weighted residential arrears has increased from 2.85 bills behind in 2018 to 4.20 in 2022, an increase of nearly 50% in just four years.

The average arrears at the time of a nonpayment disconnection were roughly \$350. While in 2018 and 2019. In the first ten months of 2023, the average arrears at the time of disconnection were \$495.26.

OCA St. 5 at 112-16.

Moreover, even if PAWC had reduced its long-term arrears to pre-COVID levels, it was those pre-COVID levels that the PUC's 2018 Management Audit found to present management concerns. Additionally, PAWC's collections performance is poor compared to the performance of Pennsylvania's other large water utility. When compared to Aqua PA, PAWC has a higher percentage of its residential billing in debt; a higher percentage of its residential customers in debt; and a disproportionate number of residential disconnections. PAWC disconnects its residential customers at a rate three times higher than Aqua PA, the next highest water utility, while its

percentage of write offs is nearly two-and-a-half times higher than Aqua PA's. OCA St. 5SR at 15-16; OCA St. 5 at 113-14. These indicators show that, notwithstanding the impact of COVID on all utilities' collections, PAWC's collections performance is poor.

OCA witness Colton also provided extensive data detailing the Company's poor performance in other areas of customer service:

Customer complaints – in 2022, the most recent year for which complete data is available, the PUC's Bureau of Consumer Services (BCS) received 681 consumer complaints from PAWC customers. Of those complaints, BCS found 25% to be to be "justified." That rate of justified complaints is 25% higher than Aqua PA (which had a 2022 justified complaint rate of 20%) and nearly two times higher than the justified complaint rate of other Class A water utilities.

The 686 PAWC complaints found to be justified in the first three quarters of 2023 represented a 29% increase from the 532 justified complaints in the first three quarters of 2022, a rate of growth far higher than the growth in PAWC's overall customer count.

Payment arrangements – PAWC leads the state in forcing residential customers to seek BCS relief in the provision of payment arrangements. In 2022, the last year for which complete data is available, the number of PAWC's justified Payment Arrangement Requests to BCS was more than four times higher than the number of Aqua PA requests, despite PAWC having just over half (53%) of all residential water customers.

Verified infractions – Through the first three quarters of 2023, PAWC had 191 "verified infractions," 50% more than Aqua PA. Of those, 185 (97%) involved Chapter 56 infractions. In 2023, PAWC's verified infractions remain at a level nearly six times higher than prior to the COVID pandemic (2019).

Customer Surveys - PAWC has not compiled information that could have been used to assess how PAWC might improve its customer satisfaction or even improve its collections outcomes from customers. Further, the Company's quarterly survey is not targeted toward Confirmed Low-Income customers or toward Bill Discount Program participants.

OCA St. 5 at 116-21; OCA St. 5SR at 16-18. Finally, PAWC's claims about its top ranking among Pennsylvania water utility customer assistance programs for the types of benefits provided under the program are an admitted mischaracterization. The Company conceded that no list or ranking exists and that the statement was based on the size of its hardship grant. OCA St. 5 at 121-22 (citing

PAWC response to OCA-11-025). The size of PAWC's hardship grant is hardly reason to find superior management when it is viewed in light of a comparison of PAWC's collections problems.

PAWC had 52% of the residential customers of Pennsylvania's water companies and 78% of the residential nonpayment disconnections.

PAWC disconnected 24,625 residential accounts in 2022, while Aqua PA disconnected only 5,585 accounts and all other Class A water companies combined disconnected only 1,226 residential accounts.

In 2023 (through October), PAWC issued 129,379 disconnect notices to water customers who had already provided information to the Company establishing their low-income status, disconnected 8,724 residential water customers who had provided information to the Company establishing their low-income status but provided only 1,916 hardship grants in that same time period.

In 2022, PAWC issued 182,239 disconnect notices to customers known by PAWC to be low-income, disconnected 14,562 accounts known by PAWC to be low-income, but provided only 961 hardship grants.

OCA St. 5 at 122-23. PAWC's use of its hardship grants to respond to the arrears of low-income customers, and to prevent the loss of service due to nonpayment disconnections of those customers, is hardly indicative of exemplary management. More generally, the Company's overall customer performance provides no basis to reward PAWC with a higher return on equity based on its management performance.

Additionally, OCA witness Alexander testified that PAWC has demonstrated less than exemplary management in poor customer call center performance and poor management of its oversight of its Service Company. OCA Sts. 6 at 10-11, 19-22; 6SR at 3-5. Ms. Alexander showed the continual poor call center performance from 2019-2022, as well as the Company's unsatisfactory response to the poor performance. OCA St. 6 at 21-22. Ms. Alexander also documented PAWC's high infraction rate as demonstrated on the 2022 UCARE report. OCA St. 6 at 13. Ms. Alexander showed the failure of PAWC to properly oversee its third-party call center staff, who have been allowed to perform below the level of the corporate call centers. OCA St. 6

SR at 9. Despite this poor performance, Ms. Alexander showed that PAWC has not exercised any contractual remedies to rectify this poor performance, or structured their contracts in an efficient manner that would require adequate performance by the third-party contractors without forcing PAWC to seek remedies. OCA St. 6SR at 9-10. Furthermore, as discussed in both Ms. Alexander's Supplemental Direct Testimony and Surrebuttal Testimony, multiple consumers testified regarding inconsistent billing periods. OCA St. 6 Supp at 2; OCA St. 6SR at 26. This volatility in billing cycles creates struggles for consumers and has not been adequately addressed by the Company. OCA St. 6SR at 26.

For these reasons, has not demonstrated exemplary management worthy of a 25-basis point management adder that would cost up to \$11.8 million per year.

IX. RATE STRUCTURE AND RATE DESIGN

A. Cost of Service Studies

1. Water Operations

As discussed in its Main Brief, the OCA has demonstrated the need for four changes to the revised water class cost of service (CCOS) study that PAWC presented with its rebuttal testimony:

1. lower system-wide maximum day demand factor consistent with PAWC's recent demand data and claims regarding declining usage,
2. lower system-wide maximum hour demand factor based on the ratio of the maximum hour factor to the maximum day factor from a study conducted by a large Pennsylvania water utility, as no recent data is available for PAWC,
3. inclusion of interruptible Industrial customer usage, and
4. allocation of arrearage management program (AMP) costs and customer assistance-related administrative costs consistent with the recommendation of OCA witness Colton.¹³

¹³ OCA Schedule JDM-2SR attached to OCA Statement 4SR presents a summary of PAWC's rebuttal CCOS study with these four modifications. A comparison of the results of the Company's and the OCA's CCOS studies is provided in OCA Statement 4, Table 1SR.

OCA M.B. at 60-66, 68-70; OCA St. 4SR at 11.

a. PAWC's Maximum Day Demand Factor Is Outdated and Not Representative of PAWC's Actual System-Wide Experience.

PAWC tries to justify using an outdated maximum day factor that was last experienced in 2003, over twenty years ago. PAWC M.B. at 55-56. The Company ignores that:

- the guidance that PAWC witness Heppenstall relies on for her allocation methodology, the American Water Works Association Rates Manual, states that demand data over a representative number of *recent* years should be used for the allocations. OCA St. 4SR at 3 (*citing* Manual at 373. Demands experienced 20 years ago are not “recent” or representative of current demands. *Id.* at 3-4. Since 2003, water demand on the PAWC system has changed due to aggressive water conservation, legislation, development, and changing land uses. OCA St. 4 at 15-16.
- the Manual considers *system-wide* maximum day usage, not maximum day usage in individual areas. OCA St. 4SR at 4. All 38 areas of PAWC's system do not peak on the same day or even the same month. Tr. 2093; PAWC Exhs. CEH-1SR, CEH-2R.
- the Company's diversity ratio is based on a demand analysis prepared for 2013-2015 and does not reflect declines in customer usage estimated by PAWC witness Rea to support PAWC's claim for a declining usage adjustment to revenues in this case. PAWC St. 10 at 72; OCA St. 4SR at 3-4, 6; OSBA St. 1R at 11-12.

For these reasons and discussed in the OCA's Main Brief and testimony, a 1.2 factor should be used in the water CCOS study. *See* OCA M.B. at 61-62; OCA St. 4SR, Sch. JDM-2SR.

b. PAWC's Maximum Hour Demand Factor Is So Outdated It Cannot Reasonably Be Claimed to Represent PAWC's Actual Recent Demand.

The OCA and OSBA challenged PAWC's proposal to continue relying on demand data from a 1998 analysis to determine a maximum hour demand factor for its CCOS study. OCA St. 4 at 15-17; OCA St. 4SR at 6-9; OSBA St. 1R at 9, 13. In its Brief, PAWC repeats arguments already addressed and refuted by the OCA and OSBA's testimony and the OCA's Main Brief (see pages 63 to 65). Principally, PAWC ignores that PAWC's data and analysis is increasingly less reliable with each rate case and cannot reasonably be considered “representative” of PAWC's actual, recent customer demands – particularly where PAWC's own witness makes an adjustment to the

Company's revenues for the future test years to reflect what he claims has been a "significant and pervasive decline in usage for [residential, commercial and municipal] classes over the past ten years."¹⁴ OCA M.B. at 63-64 (quoting PAWC St. 10 at 67-72, 78-79).

While the OCA recommends a 1.5 maximum hour demand factor and OSBA recommends 1.8, both parties demonstrate that the 2.1 maximum hour factor used by PAWC is significantly overstated. OCA M.B. at 63-64; OSBA M.B. at 17; OSBA St. 1R at 9, 13. The OCA's specific concerns with the OSBA's calculation are set forth on page 64 of the OCA's Main Brief.

Prior to its next rate filing, PAWC should be required to update its analysis of system wide maximum hour extra capacity demands and then include the results of its updated analysis in its water CCOS study for that case. OCA M.B. at 65; OCA St. 4 at 18; *see also* OSBA M.B. at 17; OSBA St. 1R at 13. The Company argues that this is a large undertaking, with challenges in certain districts with multiple groundwater sources. PAWC M.B. at 57. PAWC is the largest provider of water and wastewater in the state and is highly sophisticated; surely it has the technical, legal, and financial fitness to accomplish this task. It has delayed doing so for 35 years and cannot reasonably claim that its maximum hour extra capacity demand analysis can be justifiably relied upon.

c. Interruptible Usage Should Be Included in the Extra Capacity Factor Allocations Because Interruptible Industrial Customers Are Regularly Served During Periods of Peak Demand.

As discussed in the OCA's Main Brief, there is no factual premise for excluding interruptible Industrial usage in the extra capacity factor allocations. The un rebutted evidence shows these interruptible Industrial customers have not been interrupted in the last 20 years. OCA M.B. at 65-66; OCA St. 4SR at 9 (citing PAWC response to OCA-35-9). For cost-causation

¹⁴ As noted in the OCA's Main Brief, this a continuation of the declining consumption trend Mr. Rea identifies from reports analyzing water usage since 1992 and the impact of energy efficiency legislation in 1992 and 2007 – all of which occurred *after* the 1988 demand analysis relied on by PAWC. *Id.* at 67-70.

purposes, the relevant question is not whether they are prepared for curtailment, it is what has been their actual usage of the system during periods of maximum day and hour demands? Since these Industrial customers have had uninterrupted usage of the system during periods of maximum day and hour demands, there is no reasonable basis to exclude that usage from the maximum day and hour extra capacity factor allocations. *See* OCA M.B. at 65-66; OCA St. 4SR at 9. This is consistent with PAWC witness Heppenstall’s testimony in a recent rate proceeding for a gas distribution utility, where she opined that interruptible customers that had not been interrupted in nearly 20 years should be treated the same as firm customers in the cost of service study:

Ms. Heppenstall continued, “[e]ven though PGW does not include interruptible load in calculating its peak design day demand, PGW does provide gas during the period of Interruptible classes’ peak day demand. Therefore, the cost allocation should reflect that service.”

Pa. PUC v. Philadelphia Gas Works, 2023 Pa. PUC LEXIS 298, *75 (Order Nov. 9, 2023) (*PGW 2023*).

In its Main Brief, PAWLUG argues that *PGW 2023* should be distinguished because the interruptible customers here are not a separate class, they are part of the larger Industrial class, which is mostly made up of firm customers. As such, PAWLUG argues that including interruptible usage as firm would cause firm Industrial customers to subsidize costs. PAWLUG M.B. at 16-17. This argument is incorrect and misleading – the failure to include the maximum day and hour demands of interruptible customers in determining the cost of serving Industrial customers subsidizes the entire Industrial class (since the same rates are generally applicable to all Industrial customers),¹⁵ by increasing the rates of all other customer classes. Industrial customers are being

¹⁵ *See* PAWC Supp. 45 to Tariff Water No. 5, page 16.2. In its Main Brief, the OCA erroneously referred to the tariff page addressing interruptible Standby service. Rather the discount for interruptible service is provided through the declining usage blocks above 600,000 gallons per month.

subsidized by all other firm customers because PAWC's interruptible maximum day and maximum hour extra capacity factor allocations have not been aligned with cost causation, i.e. have not been based on those customers' actual usage of the system.

Please see the OCA's Main Brief for further discussion responsive to PAWLUG, OSBA, Cleveland Cliffs, and PAWC on this issue. OCA M.B. at 65-66. As stated there, the same arguments were also made by parties representing industrial and commercial customers in the *PGW 2023* case and were not accepted. *PGW 2023* at *70-71, 75. Thus, notwithstanding that PAWC has excluded interruptible usage in its water CCOS study in prior cases, the facts and precedent demand a different result here and these customers should be included in the extra capacity factor allocations.

d. The Evidence Does Not Support a Higher Maximum Hour Demand Ratio for the Residential Class.

PAWLUG raised an additional issue with PAWC's water CCOS study, arguing that PAWC should have used a higher maximum hour demand ratio of 6.0 rather than 5.0, which would increase the cost of service allocated to the residential class by \$7.6 million. PAWLUG St. 1 at 21-22, Exh. BSL-3; PAWC St. 12R at 4. As PAWC and OCA explained in testimony, PAWLUG's position is flawed.

- While Residential demand is likely to have increased in recent years, their maximum demands will have decreased due to the days and number of hours that water can be used are less concentrated when people work at home. OCA St. 4R at 15-16.
- If the residential class is using a greater share of the overall sale of water, this will be reflected in the CCOS study since usage factors are based on annual pro forma billed usage. PAWC M.B. at 58; PAWC St. 12R at 9.
- The maximum hour ratio of 6.0 was based on "unreliable" flow data and "very anomalous events". OCA St. 4R (citing PAWC's response to PAWLUG-01-002, Att. at 21); *see also* PAWC M.B. at 58; PAWC St. 12R at 8-9, Exh. CEH-3R.

For each of these reasons and as discussed further in PAWC's and the OCA's testimony and briefs, there is no evidentiary basis to support a higher maximum hour demand ratio for the Residential class and PAWLUG's recommendation should be denied. However, the OCA agrees with PAWLUG witness LaConte that prior to its next base rate case, PAWC should conduct a new demand study to ensure current usage and demand patterns are properly reflected in PAWC's water CCOS study for that case. OCA M.B. at 65; OCA St. 4R at 17. The OSBA also supports this recommendation. OSBA M.B. at 17; OSBA St. 1R at 13.

2. Wastewater Operations

The OCA recommends no direct adjustments to the Company's Wastewater CCOS studies. Its positions on excluding the pending wastewater acquisitions and the Act 11 shift are reflected in its recommended Wastewater revenue allocation and rate design (see Sections IX.B.1.b and 2, below and in the OCA's Main Brief).

3. Cost of Service Studies for Future General Rate Increases

In its Main Brief, PAWC objects to providing additional cost of service information in its future base rate filings. PAWC M.B. at 59-60. In response to the request for PAWC to include Rider DIS and DRS as separate customer classes in its Water COSS, the Company argues that revenues from those riders are appropriately reflected as a deduction to all classes' cost of service. *Id.* Similarly, PAWC also argues that it should be permitted to continue moving the systems acquired pursuant to Section 1329 toward single tariff pricing. PAWC M.B. at 59. PAWC fully misses the mark with its objections. The requirement for the information does not dictate what rates PAWC proposes to charge those customers. PAWC can continue to negotiate discounted rates and propose rates that move Section 1329 systems towards consolidation with its SSS and CSS divisions. The difference is that the information provided in the CCOS study will enable the Commission and

parties to evaluate the reasonableness of the negotiated rates and proposed subsidies. OCA M.B. at 67-68; OCA St. 4SR at 36.

For the same reason, if the Commission rejects the inclusion of BASA and Brentwood in the current rate case, and PAWC claims them in a future rate case, it should be required to provide a separate CCOS study for each. OCA M.B. at 67-68; OCA St. 4 at 21-22; *see also* I&E M.B. at 68-69 (differences in rates are permissible only if the utility can demonstrate reasonable basis for the discrepancy).¹⁶ Please see pages 67 and 68 of the OCA's Main Brief for further discussion.

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

As more fully discussed on pages 68 to 70 of the OCA's Main Brief, the costs for PAWC's Arrearage Management Program (AMP) and administration of its H2O Grant and Discount programs are properly allocated consistent with the allocation of uncollectible costs generally, i.e. to all customer classes. In Briefs, PAWC, OSBA and PAWLUG offer the general objection that the programs only benefit the Residential class. PAWC M.B. at 60; OSBA M.B. at 18; PAWLUG M.B. at 22. These arguments miss the point. The AMP does not cause new costs that would not have existed in the absence of the program. It trades off a more immediate write-off of pre-program arrears in exchange for future in-full BDP payments. Thus, PAWC's AMP will, if anything, serve to reduce the dollars ultimately found to be uncollectible. OCA M.B. at 67; OCA St. 5R at 4, 12. Both OSBA and PAWLUG agree, to the extent that:

[I]f the AMP expense is not truly incremental to the general uncollectible expense, then it should be removed from the revenue requirement rather than directly assigned to the residential class. PAWC should not be permitted to recover the same uncollectible "dollar" twice: once through uncollectible expense and again through AMP expense. OSBA St. 1SR at 17; *see also* PAWLUG M.B. at 22.

¹⁶ I&E also raises the specific concern that "the present rate revenue from BASA shown in this case is so far below the cost of providing service to BASA customers, the public and the Commission should be aware of the subsidy being provided to BASA in the next base rate case after PAWC officially closes on BASA." I&E M.B. at 69.

Likewise, the administration of the H2O Grant and Discount programs is expected to result in a corresponding decrease in PAWC's administrative costs associated with addressing the nonpayment of bills. OCA M.B. at 70; OCA St. 5R at 5-6.

In its Main Brief, CAUSE-PA shows the fallacy of the argument that Residential customers are the only beneficiaries of the AMP and H2O programs. CAUSE-PA M.B. at 20-21. As CAUSE-PA witness Geller stated, the societal impacts of utility insecurity “significantly undermine worker productivity, impacting businesses, non-profits, government entities, schools, and other non-residential customer groups.” CAUSE-PA M.B. at 20-21; CAUSE-PA St. 1R at 6-7. This is in addition to the benefit to all PAWC customers from reductions in total uncollectible expense.

As addressed in the OCA's Main Brief, whatever determination is made regarding recovery of AMP costs going forward, the amortization of the regulatory liability for AMP costs anticipated in the last rate case, but never incurred, should be directly credited to the Residential class. OCA M.B. at 69-70; OCA St. 5R at 5. The AMP costs anticipated in the last PAWC base rate case were not directly assigned to the Residential class, but in the settlement of PAWC's last base rate proceeding those costs were collected from residential customers. Those costs were never incurred and should be refunded to Residential customers. *Id*; *see* OSBA St. 1 at 32.

The only way to appropriately capture, and to allocate, both the costs and the cost reductions, is to allocate the costs as PAWC initially proposed to do – based on an O&M composite factor.¹⁷

¹⁷ OCA's adjustment to PAWC's claim for the amount of FPFTY uncollectible expense related to AMP credits is shown in Appendix A to the OCA's Main Brief, OCA Table II, ln. 42 (Water); Table II, ln. 17 (SSS); Table II, ln. 9 (CSS); OCA St. 2 at 73-74; OCA St. 2SR at 48.

B. Revenue Allocation and Act 11

1. Water Revenue Requirement

a. Allocation of Direct Water Cost of Service

In its Main Brief the OCA outlines its detailed recommended revenue distribution for water service based on OCA witness Mierzwa's CCOS study, adjusted to provide for gradualism. OCA M.B. at 71; OCA St. 4 at 32-34; OCA St. 4SR at 15-16. The results, shown at PAWC's claimed cost of service for consistency of presentation, are provided in Table 4-SR on page 16 of OCA Statement 4SR.

b. Act 11 Reallocation – Amount and Assignment to Water Classes

On pages 71 to 75 of its Main Brief, the OCA discusses the two issues to be determined regarding application of Section 1311(c) (referred to here as "Act 11"):

- (1) whether any allocation is in the public interest and, if so, how much; and
- (2) how to assign Wastewater revenue requirement to the Water customer base.

Regarding whether and how much reallocation is in the public interest, PAWC and OSBA propose two extremes – shifting nearly all or none of the wastewater revenue deficiency to water operations. The record supports the OCA's more measured use of Act 11 to provide some relief to the Wastewater SSS and CSS customers, while moving them toward cost of service and also not overburdening Water customers. OCA St. 4 at 25-27, 29; OCA St. 1 at 37-38.

All parties who took a position oppose PAWC's proposal to shift \$69.5 million of its claimed Wastewater revenue deficiency.¹⁸ PAWC M.B., App. A (Table Act 11 – Step 2). To begin with, the OCA, I&E and OSBA all oppose the shifting of any revenue requirement related to the

¹⁸ As discussed above, in oral rejoinder, PAWC notified the parties that it would remove all revenue requirement associated with the Brentwood acquisition from its claims in this case, including the Act 11 shift. Tr. 1970, 1989; PAWC M.B. at 60, App. A (Table Act 11 – Steps 1 and 2).

pending BASA acquisition. OCA M.B. at 74; I&E M.B. at 71; OSBA M.B. at 8-9. Removing BASA reduces PAWC’s proposed shift by \$21.5 million. PAWC M.B., App. A (Table Act 11 A – Steps 1 and 2). The remaining \$48 million that PAWC proposes to shift to Water operations is *more than* PAWC’s entire revenue deficiency claim for SSS and CSS Wastewater operations. The Company goes so far as to use Act 11 to reduce revenue requirement for SSS and CSS Wastewater operations, as shown in the table below:

PENNSYLVANIA-AMERICAN WATER COMPANY

TABLE ACT 11 - WATER AND WASTEWATER REVENUE REQUIREMENT SUMMARY - STEP 2 ⁽¹⁾

	Total Company	Water Operations	Wastewater SSS General Operations	BASA Wastewater Operations	CSS Wastewater Operations
Present Rate Revenue	\$1,011,038,462	\$824,117,186	\$95,470,867	\$12,814,193	\$78,636,216
Additional Revenue Requirement	\$202,356,145	\$129,343,180	\$31,855,090	\$25,322,947	\$15,834,928
Act 11 - Wastewater Allocation	\$0	69,522,162	(31,962,411)	(21,552,699)	(16,007,052)
Proposed Revenues	<u>\$1,213,394,607</u>	<u>\$1,022,982,528</u>	<u>\$95,363,546</u>	<u>\$16,584,441</u>	<u>\$78,464,092</u>
Rate Increase/(Decrease) \$	\$202,356,145	\$198,865,342	(\$107,321)	\$3,770,248	(\$172,124)
Rate Increase/(Decrease) %	20.0%	24.1%	-0.1%	29.4%	-0.2%

⁽¹⁾ The Step 2 revenue requirement includes the revenue requirement proposed in Step 1, plus the addition of the revenue requirement associated with BASA acquisition. The Company proposes rates produced by the Step 2 revenue requirement be effective on one day’s notice, upon closing of the BASA acquisition. The Step 2 revenue requirement excludes all impacts of the Brentwood acquisition.

In its Main Brief, PAWC attempts to support its position by arguing that its allocation has only a “modest” effect on Water customers’ bills and ensures approximate parity to residential bills for Water service and Wastewater service. PAWC M.B. at 60-61. Contrary to PAWC’s assertion, changing the Water increase from 16% to 24% – *increasing the revenue increase by 50%* – cannot be characterized as modest or reasonable.¹⁹ Moreover, the 613,647 Water-only customers (90% of all PAWC Water customers)²⁰ will have no cause to thank PAWC for its efforts to arbitrarily inflate

¹⁹ As stated in the OCA’s Main Brief and testimony, allocating so much of the total Wastewater revenue requirement to Water moves all customers further from paying rates that reflect their indicated cost of service and would result in Wastewater rates that have no reasonable relationship to the cost of serving those customers. OCA St. 4 at 24, 26-27.

²⁰ As of June 30, 2023, PAWC served 613,647 Water-only customers, 68,060 dual Water/Wastewater customers and 29,525 Wastewater-only customers. PAWC St. 4, Sch. SDG-1 at 1.

their rates to match rates that PAWC charges for Wastewater service. A more appropriate parity, and one that recognizes established regulatory principles including fairness, conservation, gradualism and affordability, is to make the percentage rate increases for Water and Wastewater SSS and CSS operations reasonably proximate. Specifically, at the OCA’s recommended revenue requirement, it would be reasonable to shift up to 75% of the Wastewater SSS revenue requirement increase and up to 50% of the CSS Wastewater revenue requirement increase to Water customers.

The results is an approximate increase in revenue requirement as shown below:

OCA Recommended Revenue Requirement		
Water Operations	Wastewater SSS Operations	Wastewater CSS Operations
4.5%	5.3%	4.7%
\$36,690,821	\$5,078,655	\$3,667,604

See OCA M.B., App. A, Summary Table; OCA St. 2, Exh. LA-1, Sch. A; OCA St. 4 at 9, 28; OCA St. 4R at 7. The OCA’s recommendation would move the Wastewater SSS and CSS rates closer to their indicated cost of service while not disproportionately increasing rates for Water customers. OCA M.B. at 72-74; *Pa. PUC v. Aqua Pa., Inc.*, 2022 Pa. PUC LEXIS 161, *112 (Order May 16, 2022) (*Aqua 2021*); 66 Pa. C.S §§ 1301, 1304. To the extent that the Commission authorizes a wastewater revenue requirement increase which is more than the OCA’s calculated amount, the Commission will have to determine what amount of that increase is reasonable. The OCA maintains that an Act 11 shift that keeps comparable percentage increases for Water, Wastewater SSS and CSS Wastewater customers would be consistent with the public interest. OCA M.B. at 73-74; OCA St. 4SR at 35.

The OCA’s recommendation would also serve to provide some Act 11 relief from rate increases to the relatively small base of SSS and CSS Wastewater customers, taking into consideration the most recent PAWC rate increases that took effect in 2021, 2022 and 2023. OCA

M.B. at 73-74; OCA St. 1 at 18; OCA St. 4 at 28; OCA St. 4R at 7. This contrasts with I&E's recommendation, which would effectively provide no relief to Wastewater customers through an Act 11 shift. I&E M.B. at 71, App. A at 1. I&E witness Kubas' recommendations would result in an approximate increase in revenue requirement of 21% for SSS operations and 9% for CSS operations, at I&E's proposed revenue requirement. *Id.*

Regarding how to assign Wastewater revenue requirement to the Water customer base, the dollars are properly allocated based on the Water CCOS study adopted by the Commission. OCA M.B. at 74-75. The OCA has fully supported its position in its Main Brief and, here, responds to additional arguments raised in other parties' briefs. The OSBA's principal arguments are that allocating the subsidy treats wastewater costs like water costs and thus violates the plain language of 66 Pa.C.S. § 1311(c) and the cost-causation requirements of *Lloyd*. OSBA M.B. at 20-21 (citing *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied* 591 Pa. 676 (2007)). Both arguments should be rejected for the reasons that OSBA recognizes on page 21 of its Main Brief:

(1) the Act 11 subsidy is – by definition – “a departure from cost causation”.

(2) PAWC's wastewater class categories do not match those for its water system.

OSBA's sole focus on the word “allocate” in Section 1311(c) ignores the rest of the statute and the point of the Act 11 amendment, which was to “exempt” utilities from the prohibition on setting rates based on revenue requirement from a different type of utility service.²¹

As discussed above, only 68,060 customers are PAWC Water and Wastewater customers. PAWC St. 4, Sch. SDG-1 at 1. There is no cost basis to extrapolate their cost responsibility to the 613,647 Water-only customers. Further, the direct assignment approach advocated by the OSBA

²¹ OSBA also does not recognize the plain language of Section 1311(c) providing that the subsidy would be paid by *all* water customers of the same utility. 66 Pa.C.S. § 1311(c) (the water “customer base”), which is inconsistent with its proposed direct assignment. OCA M.B. at 75.

would be an even greater departure from cost-causation because it would skew the allocation of total revenue requirement based on the approved water CCOS study. This was aptly explained by Cleveland Cliffs witness Baudino:

For example, assume that the Residential class's underlying water service cost responsibility is 65%. Further assume that a direct assignment of the wastewater subsidy based on residential wastewater customers would give the Residential water service class a 70% share of that subsidy. This would result in a higher revenue allocation to the Residential class due solely to the direct assignment of the wastewater subsidy. Clearly, this would be unfair to Residential water service customers who had nothing to do with generating the residential wastewater subsidy. This would also be the case for other water service classes.

CCS M.B. at 4-5; CCS Rebuttal at 3-4; *see also* OCA M.B. at 75.

Consistent with these reasons and as further supported in the OCA's Main Brief and testimony, the Commission has previously rejected proposals to use wastewater class cost of service to allocate the Act 11 subsidy to water customers. *Aqua PA* at *114-15; OCA M.B. at 75.

2. Wastewater Revenue Requirement

Following from its recommendations regarding the Wastewater CCOS study, revenue requirement, and the Act 11 shift, as discussed above and in the OCA's Main Brief, the OCA recommends an increase of 4.7% for Scranton, which is consistent with the OCA's recommended increase for all Wastewater CSS and less than the OCA's recommended increase for Wastewater SSS. OCA M.B. at 75-76, n.48, App. A (Summary Table); OCA St. 4 at 38-39. As discussed above, this is more measured and reasonable than the recommended treatment of the Scranton system by I&E (no revenue deficiency shifted) and the Company (all revenue deficiency increase shifted).

The City of Scranton opposes a 4.7% increase and, generally, any increase to wastewater rates for itself. Scranton M.B. at 2. Scranton also raises the broader concern that increases to water or wastewater rates would be a hardship for its customers. *Id.* Customers in Scranton make up a significant portion of the dual Water/Wastewater customers discussed above who are facing

potential increases to both types of service.²² Thus the recommendations by OCA and other parties to limit the overall revenue increase are particularly critical for Scranton customers. The concerns raised by the City emphasize the importance of the revenue requirement issues to be decided by the Commission in this case. To be clear, the OCA shares Scranton’s concerns about affordability of wastewater and water service, but if there is to be an increase awarded to PAWC in this case, the OCA’s proposed increase and allocation strikes the most appropriate balance of all the parties in the proceeding in ensuring fairness and equitable distribution of the increase.

C. Tariff Structure

1. Residential Customer Charge

In its Main Brief, PAWC states only that its Residential water and wastewater customer charges are supported by its cost analyses. PAWC M.B. at 62. The OCA directs attention to its Main Brief where the OCA’s opposition to PAWC’s cost analyses and proposed customer charges are set forth on pages 76 to 79. *See also* OCA St. 4 at 34-36 (water), 46-47 (wastewater).

The OCA and I&E make different adjustments to PAWC’s proposed Residential customer charges but there are significant areas of agreement. The OCA and I&E agree that “it is appropriate to limit the increase in the customer charges and to consider the affordability of rates through a lower customer charge and higher usage rate.” I&E M.B. at 73-74; OCA M.B. at 99; OCA St. 5 at 72-73. Also, while I&E accepted PAWC’s analysis indicating a water customer charge of \$20 per month, I&E also recognized those cost calculations were made at the Company’s filed-for increase. Thus, Commission adjustments to PAWC’s revenue requirement claim that impact the inputs to the customer charge calculation should also reduce the indicated charge. I&E M.B. at 87 (citing

²² The OCA raises this because, for Scranton, more than customers who do not take both services from PAWC, is less impacted by the Act 11 shift approved by the Commission than the majority of customers – they will pay the approved overall increase either way.

PGW 2023 at *81, *86-87); OCA M.B. at 78; OCA St. 4 at 36. For example, adopting OCA's recommended pre-tax return of 8.71% (and removing office building and furniture costs from the analysis) reduce the calculated water customer charge for 5/8th-inch meters to \$18.73. OCA St. 4, Sch. JDM-4SR.

On the wastewater side, I&E and OCA also agree that the Company's cost analysis include costs for collecting and treating Infiltration/Inflow (I/I), which does not vary directly with the number of customers.²³ Exclusive of I/I costs, the Company's calculation of customer costs would indicate a direct cost of \$13.87 at PAWC's proposed revenue requirement. I&E M.B. at 75-76; OCA M.B. at 78. As such, the OCA recommended that Residential customer charges in Wastewater SSS Rate Zones 1, 2, 5 and 6 should be maintained at \$14.30. I&E recommends a similar monthly customer charge of \$15.00 for Wastewater SSS customers. I&E M.B. at 75. Again, these are calculated at the Company's claimed revenue requirement. When that is scaled back, the direct cost analysis supports maintaining the current SSS Wastewater Residential customer charges of no more than \$14.30.

PAWC provided no customer cost analysis for CSS operations. I&E M.B. at 82. For Wastewater CSS Rate Zones 3, 4, 7 and 9, the OCA recommended that Residential customer charges should be reduced to \$14.30 consistent with its recommendation for the SSS customers. OCA M.B. at 79; OCA St. 4 at 47. I&E's recommended \$20 Residential CSS charge is not cost-based, whereas the OCA's recommendation for a \$14.30 charge would set the charge for CSS customers at the same amount as SSS customers (whose rate is cost-based). OCA St. 4SR at 40.

²³ As discussed in OCA witness Mierzwa's testimony, I/I is largely a function of precipitation. OCA St. 4 at 46-47 (citing Water Environment Federation, *Financing and Charges for Wastewater Systems; Manual of Practice No. 27* (2004)).

Given these cost-based and bill affordability reasons, the argument of PAWC witness Rea that the customer charges should be increased to match the \$20 proposed for water customers should be rejected. PAWC St. 10R at 61. I&E witness Kubas's objections should also be dismissed. Mr. Kubas's primary concern is with the customer charges for CSS Wastewater Rate Zones 3, 4, and 6. His support for a \$20 charge is not cost-based, whereas maintaining the \$14.30 charge would set the charge at a level that was comparable to a cost-based rate. OCA St. 4SR at 40. This also has the benefit of addressing concerns by the City of Scranton by mitigating increases to the irreducible portion of the bill for its low-income and fixed income population. Scranton St. 2 at 3-5.

For these reasons and as further discussed in the OCA's Main Brief, the record supports limitation of water and wastewater Residential customer charges to \$14.30 in most rate zones. OCA M.B. at 76-79. The OCA's recommendation for Water Rate Zone 2 Residential customer charges is discussed on pages 79-80 of its Main Brief

2. Water Rate Design

As a general matter, any additional revenue to be recovered from Residential customers as a result of the OCA's customer charge recommendations should be recovered through increases in volumetric usage charges. OCA M.B. at 78. The evidentiary support for the OCA's rate design, including its specific recommendations for Rate Zone 2 (Valley), and underlying revenue allocation recommendations for Water operations is addressed in its Main Brief and, in the interest of brevity, will not be repeated here. *See* OCA M.B. Sections IX.B.1, C.1-2.

3. Wastewater Rate Design

As for Water operations, any revenue deficiency resulting from the adoption of the OCA's monthly residential customer charge recommendations should be recovered by adjusting volumetric rates. OCA M.B. at 80. As noted in the OCA's Main Brief, PAWC and the OCA agree

that if the Commission approves PAWC's proposal to delay the effective date for new rates for certain Wastewater rate zones, it should also adopt PAWC's proposal to impute revenues, by calculating the proof of revenues as if the customers were paying the new rates without any delay. *Id.*; OCA St. 4 at 48-49; PAWC St. 4R at 12. The evidence supporting the OCA's rate design and underlying revenue allocation recommendations for Wastewater operations is addressed in its Main Brief and is not repeated here. *See* OCA M.B. Sections IX.B.1.b, B.2, C.3.

4. Winter Averaging Wastewater Proposal

PAWC's proposal to change the way it determines the volumetric component of bills for Residential Wastewater customers should be rejected for the reasons set forth in the briefs and testimony of the OCA, CAUSE-PA and I&E which demonstrates that the proposal put forth by PAWC would disproportionately and unreasonably harm low-income customers. OCA M.B. at 80-82; CAUSE-PA M.B. at 25-27; I&E M.B. at 85-86.

PAWC addresses its Winter Averaging proposal on page 68 of its Main Brief. The Company disagrees with the view of the other parties that winter averaging will penalize low-income customers. This contradicts the statement of its witness that Winter Averaging will work to the detriment of low-income customers. PAWC St. 10R at 54-55. There PAWC witness Rea concedes that the purpose of the winter averaging proposal is to shift costs from higher-income customers to lower-income customers. *Id.* at 55. PAWC then argues that this purpose is justified because its proposed rate design would have a "stronger cost causation element." *Id.* As discussed in the OCA's Main Brief, the evidence shows that, due to faulty assumptions about summer usage on which it is based, PAWC's methodology would not reasonably achieve its purpose. OCA M.B. at 81-82; CAUSE-PA M.B. at 26. Additional negative impacts were pointed out by CAUSE-PA:

It would also deter conservation, making it more affordable for some households to maintain swimming pools – at the expense of other families’ ability to maintain drinking water.

CAUSE-PA M.B. at 26.

The disproportionate harm to the low-income Wastewater customers – who will bear the burden of foregone revenue created by Winter Averaging, with little opportunity to be the recipient of any reduced bills – compels rejection of the proposed new rate design. OCA St. 5 at 105; I&E M.B. at 85-86. Please see the Briefs of the OCA, CAUSE-PA and I&E for further discussion.²⁴ See OCA M.B. at 80-82; CAUSE-PA M.B. at 25-27; I&E M.B. at 83-86.

D. Scale Back of Rates

The OCA’s position on scale back is summarized on pages 82 to 83 of its Main Brief. As a general matter, most parties’ positions on scale back are tied to their positions on the CCOS studies and the Act 11 shift and, for the same reasons the OCA has supported or challenged those positions, the OCA takes the same position on their scale back recommendations.

X. ALTERNATIVE RATEMAKING REQUESTS

PAWC has not demonstrated a need for its requested alternative ratemaking mechanisms, or that the proposals are just and reasonable, as discussed more fully in the OCA’s Main Brief at 83-95. Simply, PAWC seeks to shift risk of under-recovery from where it belongs – on the utility – to where it does not – on consumers. Given the regulatory compact, the Commission should not view PAWC’s requests for this incentive regulation as merely whether the Commission has the authority to grant such, nor view that authority as a presumption of justness and reasonableness regardless of the request. Rather, it is a judgement call that requires the Commission to view the

²⁴ If adopted, despite the reasoned objections by the OCA, CAUSE-PA and I&E witnesses, the volumetric charges should be made subject to the same low-income discounts to which other PAWC volumetric charges are subject. OCA M.B. at 82; OCA St. 5 at 109.

incentive regulation in totality instead of in permanent isolation because the cumulative effect on customer bills mirrors the negative effects of monopoly power and pricing on captive customers. PAWC's alternative ratemaking proposals on top of its use of the FPFTY, DSIC, Section 1329 rate base valuations, and Section 1311(c) shift, are demonstrable of the very sort of monopoly power requiring regulatory oversight and constraint. *See* OCA M.B. at 83-84. As explained in the OCA's Main Brief, the proposals fail to meet the requirements under Section 1330 of the Code, 66 Pa. C.S. § 1330, fails to satisfy the fourteen factors in the Commission's Policy Statement at 52 Pa. Code § 69.3302(a); violates sound ratemaking principles, and poses a risk to the consumers of unknown rate increases outside of the rate case process. OCA M.B. at 83-95.

A. Revenue Decoupling Mechanism (RDM)

PAWC argues that "revenues remain largely outside of PAWC's control" and therefore requests approval of its proposed Revenue Decoupling Mechanism (RDM). PAWC M.B. at 70. This argument is ridiculous. As a natural monopoly that is authorized and regulated under the Public Utility Code, PAWC enjoys the privilege of a guaranteed consumer base within its service territories, which effectively guarantees it a certain level of revenue. *See* OCA St. 1 at 25. Additionally, PAWC utilizes a FPFTY, and PAWC's FPFTY consumption projections are designed to produce higher rates in this proceeding that already reflect declining per-customer water usage and investors benefit from the reduction in regulatory lag associated with use of the FPFTY. OCA St. 4 at 60; OCA St. 4SR at 23. Also, PAWC is compensated for its business risks with the opportunity to earn a fair rate of return. Frankly, PAWC has very little revenue risk at all and has not demonstrated any need for the RDM.

What the RDM will do is wholly shift the risk of recovery of PAWC's revenue requirement due to declining consumption away from the Company and its shareholders and onto customers,

which resembles the effect of *unregulated* natural monopoly pricing. OCA St. 1 at 40-41; OCA St. 1SR at 9-10. While PAWC is compensated for the risk of recovery, consumers would be forced to bear that risk for no compensation or benefit and at the harm of being penalized in their monthly bill for conserving water. OCA Sts. 1 at 47; 3 at 19; 4 at 58, 60; 4SR at 23-24. Moreover, the RDM would lower PAWC's risk profile, and this lower risk would then need to be reflected in the approved ROE. OCA St. 3 at 19. Specifically, should the Commission decide to adopt the RDM, the OCA recommends the Commission adopt a ROE at the lower end of the OCA's modeling range at 8.7% to reflect the commensurate decrease in risk that PAWC will experience. OCA St. 3 at 19.

B. Environmental Compliance Investment Charge (ECIC)

Consistent with PAWC's theme of shifting all risk away from the Company and its shareholders and squarely onto consumers, PAWC again claims it needs alternative ratemaking relief in the form of the ECIC because the setting of environmental mandates by the government is "outside PAWC's control." PAWC M.B. at 73. There is no need for the ECIC. PAWC's obligation to comply with environmental laws and regulations is part and parcel of PAWC's duty to meet the requirements of Section 1501 of the Code to maintain adequate, safe and reasonable service and facilities. PAWC has already shown that it can do this without any additional incentive or inducement. OCA St. 1 at 49-50. The Company has the responsibility, expertise, and managerial oversight necessary for making the necessary, prudent, and reasonable investments in infrastructure to comply with environmental mandates. Its attempt to turn the Commission into a super board of directors by requesting that the Commission initiate a new review and approval process of its ECIC plans in advance of PAWC making necessary plant investments is not supported by law, unnecessary, imprudent, and does not enhance the safety, security, reliability or availability of utility infrastructure. 66 Pa.C.S. § 1330(a)(2); *see also Northern Pa. Power Co. v.*

Pa. PUC, 5 A.2d 133, 134-35 (Pa. 1939); *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981); *NAACP v. Pa. PUC*, 290 A.2d 704, 708 (Pa. Cmwlth. 1972). PAWC needs to be able to remain agile in making and adjusting its plans for capital spending in a way that is compliant with environmental mandates between rate cases. Without the ECIC, the Company's decision-making would remain subject to the Commission's full investigation and review for prudence in ratemaking and in terms of safe and adequate service, having the benefit of the evidence that is developed in a base rate case. OCA St. 1 at 50-51.

Moreover, PAWC is compensated for its business risks related to making prudent investments in property that comply with environmental mandates by being able to include such property in rate base (assuming it is necessary, prudent, and reasonably certain to be used and useful in the FPFTY) and by being given the opportunity to earn a fair rate of return on its property. While PAWC is compensated for the business risk, consumers would be forced to bear the risk under the ECIC for no benefit and at the harm of being penalized in their monthly bill by constant increases in their monthly bills through the ECIC surcharge (in addition to the DSIC). OCA Sts. 1SR at 27; 4 at 70; 4SR at 30-32; 3 at 19. If the Commission were to adopt the ECIC, PAWC's risk profile would be lowered, and this lower risk would then need to be reflected in the approved cost of equity for the Company. OCA St. 3 at 19. Specifically, should the Commission decide to adopt the ECIC, the OCA recommends the Commission adopt a ROE at the lower end of the OCA's modeling range at 8.7% to reflect the commensurate decrease in risk that PAWC will experience. OCA St. 3 at 19.

XI. LOW-INCOME CUSTOMER ASSISTANCE

A. Summary

PAWC has not met its burden of proof in demonstrating that its affordability analysis is just and reasonable and will lead to affordable rates for low-income customers. The OCA's adjustments to PAWC's affordability analysis are just and reasonable and supported by the record and show the need for two changes to PAWC's existing bill discount program to generate reasonably affordable bills for PAWC's low-income customers: (1) addition of a fourth tier of eligibility for customers whose household incomes are between 151% and 200% of Federal Poverty Level; and (2) increased percentage discounts for each tier. PAWC supports/does not oppose these changes.

B. Affordability Analysis

In its Main Brief, PAWC dismissed PAWC witness Colton's critique of PAWC's affordability analysis. PAWC M.B. at 76-81. However, as identified in Mr. Colton's testimony, the affordability analysis presented by PAWC witness Rea at the enterprise level and community level is inadequate and unreasonable and, therefore, Mr. Rea's conclusion that PAWC bills are generally affordable when viewed from both the community level and the household level is unreasonable and unsupported. OCA witness Colton corrects the flaws in the Company's analyses and presents a fully substantiated and accurate analysis that should be adopted by the Commission. OCA St. 5 at 7-39. Mr. Rea in his rebuttal did not credibly respond to the affordability analysis that Mr. Colton recommended be adopted. *See* OCA M.B. at 95-96 (citing OCA Sts. 5 at 7-39, 5SR at 8-9). The OCA submits that Mr. Colton's affordability analysis credibly demonstrates the need for PAWC to make significant changes to its low income program offerings as outlined more fully below.

C. H2O Bill Discount Program Design

The OCA supports PAWC's proposal to add a fourth tier of eligibility for customers whose household incomes are between 151% and 200% of Federal Poverty Level (FPL). PAWC St. 10 at 24, 27-28; OCA St. 5 at 49-50. The evidence also shows the need for increased percentage discounts for each tier, as proposed by the OCA and CAUSE-PA witness Geller. *See* OCA M.B. at 97 (table) (citing PAWC St. 10R at 29; OCA St. 5 at 45; CAUSE-PA St. 1 at 45).

The Company's existing BDP does not do enough to increase customer affordability. After applying PAWC's existing discounts: (1) fewer than 10% of customers with an affordable bill have income less than 200% of Poverty Level, OCA St. 5 at 40 – 41; (2) 84% of customers with income less than 50% of Poverty Level, exceed the 2% burden level, OCA St. 5 at 41; and (3) 80% of customers with income between 50% and 100% of Poverty Level, and 82% of customers with income between 100% and 150% of Poverty, exceed the 2% burden level, OCA St. 5 at 41. The same impacts arise for wastewater customers. OCA Sts. 5 at 45, 5SR at 3.

In rebuttal, PAWC witness Rea dismissed this data, stating "There are, and will always be, groups of customers for whom affordability of water and wastewater service may be challenging." PAWC St. 10R at 9. In his oral rejoinder testimony, Mr. Rea stated:

Q. On page three of Mr. Colton's surrebuttal testimony, he made three observations regarding customer affordability after applying PAWC's existing discounts. Do you believe any additional context is necessary in considering these observations and the Company's overall affordability?

A. Mr. Colton's statistics lack any sort of context around the numbers that are in each group that he cites. For example, Mr. Colton states that fewer than 10 percent of customers with an affordable bill have incomes less than 200 percent of Federal Poverty Level. But he does not state that this group only makes up approximately 25 percent of the Company's customer base.

Tr. 2012 (emphasis added). While Mr. Rea downplayed the significance of this sobering reality, in fact, after receiving PAWC's proposed discount, 112,785 customers with an income of less than

200% FPL would face an unaffordable PAWC bill. OCA St. 5SR at 3. Rather than ignore the nearly 113,000 low-income consumers with rates that are unaffordable, the discounts should be increased to improve affordability. OCA St. 5 at 45.

Notwithstanding disagreements over the affordability analysis, PAWC “does not oppose the modifications recommended by Mr. Colton or Mr. Geller. The proposed discounts to the BDP offered by Mr. Colton and Mr. Geller *would provide greater levels of affordability for customers at the lowest end of the income scale.*” PAWC M.B. at 82; PAWC St. 10R at 31 (emphasis added). These modified discounts will generate reasonably affordable BTI Ratios for all four FPL tiers and help to make rates more affordable than PAWC’s existing discount levels. PAWC St. 10R at 29; OCA St. 5 at 46-48; CAUSE-PA St. 1 at 45-46.

D. Hardship Fund

PAWC’s Main Brief does not overcome the arguments and proposed adjustments put forth by the OCA in this proceeding. The OCA recommends two adjustments to the Hardship Grant program to improve affordability of rates. First, the maximum income eligibility for PAWC’s hardship grants should be increased to 250% of the FPL. OCA St. 5 at 64-66. Second, amend the rules of the program to allow for multiple distributions (rather than a single distribution) to a customer in a year up to the existing maximum of \$500 per year. OCA St. 5 at 64-66. While consumers with income between 200% and 250% of the FPL may not need a bill discount, these consumers are still likely to have a fragile income. Therefore, the OCA’s position should be adopted for the reasons explained more fully in the Main Brief. *See* OCA M.B. at 98-99.

E. Conservation Assistance

See the OCA’s Main Brief at 99.

F. Low-Income Customer Outreach, Screening, and Intake

See the OCA's Main Brief at 99-100.

G. Data Collection, Reporting, and Monitoring of Low-Income Programs

See the OCA's Main Brief at 101.

H. Comprehensive Written Plan

As stated in the OCA's Main Brief on page 101, PAWC should be required to develop a comprehensive written plan to be filed with the Commission's Bureau of Consumer Services as an element of fundamental prudent and adequate program planning and management of its low-income customer assistance programs. OCA St. 5 at 67-72; OCA St. 5SR at 30-31. In response to PAWC's Main Brief, while the OCA recognizes that PAWC is not required by regulation to prepare and file a written plan, the need to prepare and file a written plan is based on the need for efficient and adequate service to low-income customers and planning of expenditures for related programs. OCA St. 5 at 68. The failures of not engaging in this fundamental planning process are evident in the context of the Company's BDP as stated in Mr. Colton's direct. "PAWC can tell you what it is doing, in other words ('a range of BDP operational information') but cannot tell you why it is doing this or what it is seeking to accomplish . . . let alone what, if anything, those activities are accomplishing in fact." OCA St. 5 at 68.

I. Administration of PAWC's Low-Income Assistance Programs

See the OCA's Main Brief at 101.

XII. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES

A. Summary

In its Main Brief, the Company states that the Commission can only direct service quality improvements in the context of a base rate case as performance-based rates under the alternative

ratemaking provisions of Section 1330, based on a performance-based plan requested by the Company. PAWC M.B. at 31 (citing 66 Pa.C.S. § 1330). PAWC is incorrect and is attempting to usurp the Commission’s power through an overly narrow and incorrect reading of 66 Pa.C.S. §1330(b). PAWC M.B. at 91. The Company’s proposed reading of Section 1330(b) suffers from several fatal flaws. First, Section 1330 is a discretionary provision of the statute; it utilizes the word “may” indicating that the Commission has discretion to adopt alternative ratemaking mechanism but is not bound or obligated to, especially not at the utility’s whim or decision to apply for a performance-based rate. Second, the Company’s proposed interpretation of Section 1330(b) runs afoul statutory construction principles. 1 Pa.C.S. §§ 1921 and 1922. PAWC seeks to turn Section 1330(b) into a mandatory rather than discretionary statute by ignoring the word “may.” 1 Pa.C.S. § 1921. Additionally, as stated under 1 Pa.C.S. §1922 “In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: (1) That the General Assembly does not intend a result that is *absurd*, impossible of execution or *unreasonable*.” 1 Pa.C.S. §1922 (emphasis added). It is clear, that in enacting Section 1330, the General Assembly did not seek to remove power from the Commission under 66 Pa C.S. §§ 523, 1504(1), (2), and 1505(a). PAWC’s reading of Section 1330 would render these provisions void and meaningless and completely remove authority and discretion to review and direct service quality improvements by order when establishing just and reasonable rates.

B. Customer Service Performance

In the Company’s Main Brief, it attempts to defend Ms. Alexander’s critiques of their poor call center performance by pivoting into areas not testified to by Ms. Alexander. PAWC M.B. 93; OCA St. 6 at 21-23. As can be seen in Ms. Alexander’s testimony, the Company has continually had poor call center answering and call drop rates since 2019. OCA St. 6 at 22. Furthermore, the

Company's argument on page 94 of its Main Brief, regarding the usage of IVR to answer calls within 30 seconds has already been rebutted by Ms. Alexander in her Surrebuttal. OCA St. 6SR at 8-9. In her Surrebuttal testimony, Ms. Alexander explained that the Commission's customer Service Performance Report states that the measurement reported is the wait time after a caller enters the que, not the time before the IVR system picks up. OCA St. 6SR at 8. Therefore, it is reasonable to hold the Company to the same standard of 80% of calls answered within 30 seconds as electric and gas utilities. OCA St. 6SR at 9.

Furthermore, on page 94 of the Main Brief, the Company attempts to discredit Ms. Alexander's recommendations to improve PAWC's oversight of the Service Company's Customer Service Organization (CSO) and improve the CSO's call handling by arguing that CSO's are already monitored on daily basis, and that the Service Company can set staffing levels of third-party call handling agencies based on performance. PAWC M.B. at 94. These arguments are the same arguments that were put forth in Ms. Degillio's testimony and rebutted by Ms. Alexander. PAWC St. 9R at 6-8; OCA St. 6SR at 9-10. As discussed by Ms. Alexander in her Surrebuttal, the Company's ability to make changes for poor performance of third-party call centers is of little use if the Company never exercises these abilities. OCA St. 6 at 20 (Confidential), 6SR at 10.

Despite claims of a "robust complaint analysis process" as made on page 96 of the Company's Main Brief, as set forth in both Ms. Alexander's Direct, and Surrebuttal Testimony, the Company fails to conduct an adequate root cause analysis. OCA St. 6 at 14-17; OCA St. 6SR at 11-15. As shown in Ms. Alexander's Surrebuttal, the complaint logs that the Company alleges constitute a root cause analysis merely indicate that complaints are being tracked, but not analyzed or result reviewed to determine necessary changes; indeed, "every attempt to obtain that type of

actual use of the raw data in these tracking logs did not result in any further internal documents.”
OCA St. 6SR at 15.

In its Main Brief, PAWC references “multiple sources of customer feedback to monitor customer satisfaction” including surveys which allow PAWC to stay abreast of changing customer expectations. PAWC M.B. at 92. The Company then goes on critique Ms. Alexander’s testimony as narrow and “erroneously focuses her evaluation of CSO performance on wait times and call abandonment rather than the overall customer experience.” PAWC M.B. at 93. Ms. Alexander did consider overall experience on page 24 of her direct testimony where she broke down the Company’s customer satisfaction survey and found that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]. As stated by Ms. Alexander in her Surrebuttal, the Company did not respond to her testimony regarding these survey results. OCA St. 6SR at 16.

C. Tenant Issues and Protections

The OCA is not briefing this issue.

D. Water Services Act and Section 12.1(H) of Water Tariff

In its Main Brief, PAWC argues that the OCA’s recommendation that PAWC post its own notice is inconsistent with the Water Services Act or Act of April 14, 2006, codified at 53 P.S. §§ 3102.501 – 3102.507 (WSA). That is not accurate. The notice that the OCA recommends PAWC post at the time of water shut-off is not required by the WSA, but neither is it prohibited. Consistent

with PAWC’s Main Brief argument, in oral rejoinder, Ms. Dean testified that “termination notices provided at the time of shutoff are voluntary and not required by the relevant statutes or regulations.” Tr. 2022. Even though water shut-offs performed by PAWC pursuant to the WSA are not governed by Chapter 14 of the Code or Chapter 56 of the Commission’s regulations, the Commission nevertheless has the authority to direct PAWC to post notice at the customer’s premises at the time of water shut-off pursuant to Sections 102, 1501, 1504, 1505 of the Code as part of reasonable service. 66 Pa.C.S. §§ 102, 1501, 1504, 1505.

“Service.” – Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed...by public utilities...in the performance of their duties under this part to their patrons, employees, other public utilities, and the public...

66 Pa.C.S. § 102. Service must be reasonable. 66 Pa.C.S. § 1501. The Commission can, with the benefit of a fully developed record, direct the reasonable standard of service and the reasonable service to be observed by the public utility. 66 Pa.C.S. §§ 1504, 1505.

Here, PAWC is performing the act of water shut-offs to its water customers to effectuate the WSA. Used in its broadest and most inclusive sense, the act of a water shut-off is utility service, even if the shut-off is done to effectuate an agreement or be in compliance with another statute (*i.e.*, the WSA). 66 Pa.C.S. §§ 102, 1501. Moreover, given that tariffs govern only jurisdictional service and rates, that PAWC sought in its initial filing Commission approval of tariff language to govern the act of shut offs to effectuate the request of a non-Company utility provider pursuant to the WSA is as close to a concession as one can get on the point that the Commission has the authority over this service. Moreover, PAWC witness Alexander’s recommendation that PAWC post notice at the customer’s premises at the time of water shut-off is reasonable because there is very high termination rate under the WSA. OCA St. 6 at 27-29. For January 2023 through November 2023, PAWC received 3,613 requests to terminate service from these “non-Company”

entities and PAWC terminated water service for 1,950 customers or 54% of those requests. Given this very high termination rate, Ms. Alexander made three recommendations, one of them being that PAWC post notice at the time of water shut-off to better protect consumer by giving them accurate and complete information of why the shut-off occurred and the steps the customer must take to get service turned back on.

Ms. Alexander also recommended improvements to the tariff language proposed by PAWC. In its Main Brief, PAWC disagreed with her recommendations, stating that after it accepted some of Ms. Alexander's recommended changes, Ms. Alexander seeks to include language which would require a Commission-approved agreement with a non-Company wastewater provider in all circumstances, which, according to PAWC, unreasonably restricts PAWC's shut-off agreement with Aqua as a wastewater provider. PAWC M.B. at 100-01.

In response, Ms. Alexander put forth revisions to the Company's proposed Section 12.8 that will protect consumers, while still allowing the Company to uphold its Joint Service Agreement with Aqua (strikeouts represent recommended deletions and underline text represents recommended language):

12.8 Termination by Company for Non-Payment of Wastewater Service to a Non-Company Wastewater Provider

~~The Company may also terminate service in accordance with the terms of any agreement between the Company and a non-Company wastewater provider for non-payment of wastewater service when due upon prior notice by the non-Company wastewater provider.~~ The Company may terminate a customer's water service due to the customer's non-payment of charges owed to a non-Company wastewater provider, provided that: (1) the Company has an effective agreement with the non-Company wastewater provider pursuant to the Water Services Act or Act of April 14, 2006, codified at 53 P.S. §§ 3102.501 – 3102.507, or a Commission-approved agreement with the non-Company wastewater provider; and (2) the customer received prior notice from the non-Company wastewater provider of the past due amounts owed to the non-Company wastewater provider.

Following the issuance of termination notice by the non-Company wastewater provider, the Company will not ~~move forward with termination of~~ terminate the

customer's water service upon notification to the Company by the non-Company wastewater provider that the customer does either of the following: (1) disputes the termination for non-payment; or (2) if ~~the customer~~ produces a medical certification.

Upon termination, the Company will post the termination notice at the customer's premises. The Company's termination notice shall provide the following information in conspicuous format and plain language: (1) a statement that PAWC terminated the customer's water service due to the customer's non-payment of non-Company wastewater charges; (2) a statement that the termination of service is not the result of customer's non-payment of water charges owed to PAWC; (3) the name and contact number of the non-Company wastewater provider; (4) the contact information for the Company; and (5) a citation to Section 12.8 of PAWC's Water Tariff and the weblink for accessing the Company's tariff webpage.

OCA St. 6SR at 18-19. The Company rejects Ms. Alexander's changes because its Joint Services Agreement with Aqua is not approved by the Commission but rather the Commission issued a Secretarial Letter indicating it was neither approving nor denying the Joint Services Agreement between PAWC and Aqua and directed PAWC to seek Commission approval of changes affecting customers under their respective tariffs, which is the reason why PAWC seeks to change its tariff. Tr. 2020-22; PAWC M.B. at 100-01. The OCA believes such a joint agreement between PAWC and Aqua is "service" based on the definition in Section 102 and the act of either utility performing water shut-offs for the other utility to effectuate each utility's Commission-approved tariff is "service" and hence, such agreements should be approved by the Commission to ensure that they meet the requirements of Section 1501 and Chapter 14 of the Code and Chapter 56 regulations. Hence, the OCA maintains that the Commission should adopt the tariff language proposed in the Surrebuttal of Ms. Alexander.

E. American Water Resources

In its Main Brief, PAWC states that PAWC's relationship with American Water Resources (AWR) as a partner that provides optional warranty products and services to PAWC's customers has remained unchanged over the last two decades. PAWC M.B. at 102. This is wrong. As PAWC

admits in its Main Brief, there was a major change. That is, PAWC’s parent company, American Water Works Company, Inc. (AWK), sold its interests in AWR in December 2021, which ended the affiliated relationship between AWK, PAWC, and AWR. Another major change is that, at or around the time of the AWK’ sale of is interests in AWR, AWK and PAWC entered into special agreements with AWR: (1) a written billing and marketing agreement between PAWC and its ex-affiliate, AWR (Utility Billing Agreement); and (2) a licensing agreement between AWK and its ex-subsidiary, AWR (Licensing Agreement).

In its Main Brief, PAWC calls these changes not a “meaningful change.” PAWC M.B. at 103. The OCA begs to differ based on the damning facts in this record that speak for themselves. More specifically, even though there is no formal corporate relationship between AWR and PAWC or AWK, through these agreements **[BEGIN CONFIDENTIAL]**

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[END CONFIDENTIAL] See OCA M.B. Appendix D, Proposed Findings of Fact Nos. 618-30.

In its Main Brief, PAWC argues that its arrangement with PAWC is not discriminatory and not misleading. PAWC M.B. at 103-04. This argument is meritless. AWR’s exclusive marketing and billing arrangement with PAWC is discriminatory to any other provider of these services in PAWC’s service territory. The potential effect of discriminatory practices is that consumers pay more for warranty services than might be available from other competitive providers of warranty services in PAWC’s service territory. Clearly, American Water Resources is able to promote its services to PAWC customers and collect the fees for its services in a manner not available to any other provider for these non-basic services. The corporate policy that allows this unregulated entity to [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] raises serious concerns about the impact on customer expectations about the privacy of their customer information that PAWC as the utility has. See OCA St. 6 at 40.

In its Main Brief, PAWC relationship with AWR and AWR’s use of the American Water name and logo are outside the scope of this proceeding. PAWC M.B. at 105-06. This is meritless. PAWC performs on-bill billing for AWR’s services and products. Utility billing is subject to Section 1501 and Chapter 14 of the Code and Chapter 56 of the Commission’s regulations. The

record shows that: PAWC bills for warranty services that are offered and provided by AWR in return for a service fee. PAWC provides these billing services on behalf of AWR pursuant to the Utility Billing Agreement. AWR provides the warranty services to PAWC customers with whom it has a service contract. The warranty services appear as a line item on PAWC's customer bills as "Protection Programs" and these fees are included in the total amount due on the bill. In fine print on the customer bill, a disclaimer states that the "Protection programs for water, sewer, and in-home plumbing are offered by American Water Resources" and explains that the charges are not regulated by the Commission and that PAWC's regulated services will not be disconnected for nonpayment or charged late fees in connection with non-payment of the Protection Programs charges. OCA St. 6 at 35-36.

AWR stands to benefit from the false impression given to PAWC's customer as it gives it an unfair advantage over competitors offering similar warranty services to customers in the unregulated market for warranty services and induces consumers to buy from AWR under the false impression that they are buying from a trusted brand. OCA St. 6 at 39. Likewise, PAWC stands to benefit from this false impression as PAWC's collects additional service fees from AWR under the Utility Billing Agreement as the number of customers being billed for warranty services increases. OCA St. 6 at 39-40. That the Licensing Agreement is between AWK and AWR does not bring sudden clarity to the fraudulent impression being sold to PAWC's customers.

In its Main Brief, PAWC states that "similar arrangements exist between other major [PA] utilities and a competitor of AWR, HomeServe, which also uses the utility name and logo to market warranty services and products to residential utility customers." PAWC M.B. at 105. First, PAWC concedes in this argument that AWR does have competitors (which makes the OCA's point above that PAWC as the utility should not be putting its thumb on the scale in favor of AWR without

there being any actual price benefit for consumers). Next, according to HomeServe’s web portal, one of their “partners” is Aqua (a unit of Essential Utilities), but the information on that program states that HomeServe’s products will not appear on Aqua’s customer bills²⁵. According to this web portal, HomeServe does provide non-basic utility services to customers on behalf of several FirstEnergy companies in Pennsylvania,²⁶ but FirstEnergy does not include HomeServe charges on its bills when HomeServe is directly selling its own services to FirstEnergy’s customers.²⁷ This attempt to point to other relationships is an apple-to-orange comparison and it does not resolve the specific nature of the relationship between PAWC and AWR. In particular, the products and services marketed by HomeServe do not attempt to improperly link the corporate entity by using the logo and marketing language of their partner public utilities as exists between PAWC and AWR.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] and, thus, obtain a marketing advantage that is deceptive and misleading. OCA St. 6SR at 22-23. As documented in Ms. Alexander’s Supplemental Direct Testimony, customers testified to having originally assumed these entities were connected legally. OCA St. 6 Supp at 2-5.

In its Main Brief, PAWC states that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL.] PAWC M.B. at 106. The OCA recommends that this

²⁵ “If I’m an Aqua customer, will HomeServe charges show up on my Aqua bill? No. Customers who sign up for these plans will be billed directly by HomeServe.” <https://www.homeserve.com/en-us/partners/aqua/>

²⁶ <https://www.homeserve.com/en-us/partners/firstenergy/>

²⁷ *Interstate Gas Supply, Inc. v. Metropolitan Edison Co.*, C-2019-3013805 (Order Apr. 14, 2022), at 17-18, available at <https://www.puc.pa.gov/pcdocs/1740689.pdf>. (“[T]he relationship with HomeServe is not one which demonstrates that the EDCs provide “on-bill billing” to non-affiliated third parties. Rather, the EDCs contracted with HomeServe to serve as the program administrator for certain of the EDCs’ own non-commodity products and services... We find that the EDCs do not...allow HomeServe to bill for its non-commodity products and services on the EDCs’ bills.”)

assertion be included in the Commission's investigation of this arrangement, including whether the 1989 Agreement between PAWC and the Service Company actually contemplates such services and it still reasonable, should the Commission adopt the OCA's position in this case to open an investigation into this matter.

Finally, in its Main Brief, PAWC's asserts that OCA's proposal to "impute" AWR revenues should be rejected. PAWC M.B. at 107. OCA made no such proposal. As explained in its Main Brief, the OCA has not challenged PAWC's \$659,624 miscellaneous revenue claim related to AWR because it is fully substantiated it benefits consumers by offsetting proposed revenue requirement OCA St. 2SR at 49-50. While dedicating nearly seven pages to AWR in its Main Brief, nowhere does PAWC concede that it should stop or change its practices with AWR; rather it vehemently defends its arrangements with AWR. PAWC M.B. at 101-07. Ms. Alexander has only recommended an investigation and the pause on any new enrollments pending such investigation. OCA St. 6 at 41; OCA St. 6SR at 23-24. Thus, if the Commission adopts Ms. Alexander's recommendation to open an investigation, it would be speculative to say what the outcome of that Commission investigation would be, how it would impact rates, or when the outcome will occur. Given this uncertainty and given that the amount of miscellaneous revenue that PAWC has been collecting from AWR is fully substantiated and benefits consumers, the \$659,624 revenue should remain included in the revenue requirement for the FPPTY. OCA St. 2SR at 50.

F. Main Extensions

Based on available information, there is critical need for public water service in the Avella PA area. The Jefferson Township Municipal Authority (JTMA) complaint attached as Exhibit TLF-4 to the testimony of OCA witness Fought and the Public Input Hearing testimony describe serious problems with quantity and quality of water available from wells, in an area with prevalent

underground coal mining. OCA St. 7-Supp. at 8-9; OCA St. 7SR at 7-9; Tr. 1840-41. In its Main Brief, PAWC states that it has been in continued discussions with JTMA:

PAWC is continuing to evaluate whether the proposed main extension is eligible under Rule 27.1(F) of its tariff, which authorizes main extensions within its existing service territory to be installed without customer contributions subject to Commission approval in order to address health and safety concerns.

PAWC M.B. at 107. The OCA appreciates that PAWC is investigating the main extension but emphasizes the need for action. The JTMA complaint, supported by letters from State Senator Camera Bartolotta, the Jefferson Township Volunteer Fire Department, Jefferson Township Board of Supervisors and Range Resources, asserts:

- Residents are struggling with carrying on daily activities. Several (including Mr. Choff) have had to install cisterns and have to rely on hauled water to fill them. Those that do have some supply have had to install and maintain expensive purifying and softening systems.
- The requested service area is of particular concern for the fire department due to the significant distance from the homes to the nearest fire hydrant and lack of any nearby alternate sources of water. Hauling water is complicated by the manpower available at any time to carry on the operation of refilling tankers at a distance from the fire.
- Further, the requested service area includes three large natural gas well pads for that pose a heightened risk to life and property, due to the inability to effectively fight a fire.

OCA Exh. TLF-4 at 7-8, 11, 12, 13.

The concern raised by the Company appears limited to whether the main extension should be funded under Tariff Rule 27.1(F) or through grants. PAWC M.B. at 107; PAWC St. 3R at 2-5; OCA Exh. TLF-4 at 3, 12; Tr. 1841. In recognition of the need for and urgency of the service extension, the OCA reiterates its recommendation that PAWC be directed to:

1. Seek grant funding, lower-cost funding, or contributions from other sources to help offset the costs of the project, whether or not the extension is funded under Rule 27.1(F).

2. Meet regularly with the OCA and other interested parties to provide updates on the JTMA project and allow the OCA to ask questions in real time.²⁸

OCA St. 7SR at 8-9. As stated in the OCA's Main Brief, these commitments should be a condition of approval for any rate increase in this matter. OCA M.B. at 107; *see also* OCA Exh. TLF-4 at 3, 7, 11, 12.

G. Pressure Surveys and Pressure Reducing Valves

It appears that the OCA and PAWC are in general agreement regarding a new notification process for customers to whom the Company provides pressures above 100 pounds per square inch (psi). PAWC M.B. at 108-09. As discussed in the testimony of OCA witnesses Fought and Alexander, the OCA's main concern is the need to educate customers *before* there is a pressure reducing valve (PRV) failure. OCA St. 7 at 9-10; OCA St. 7SR at 2; OCA St. 6SR at 25. The key information customers need to know: (1) that normal operating pressures at their service location are 100 psi or higher, (2) that a PRV is required and (3) what to do and look out for to help prevent a PRV failure, i.e information about PRV maintenance, replacement and end of life. OCA St. 7 at 10; OCA St. 7SR at 2; OCA St. 6 at 42-43; OCA St. 6SR at 24-25.

While PAWC currently relies on field service representatives to provide some education where new service is being connected, the OCA's concern is centered on situations where a customer might not have contact with a field service representative, such as when a new customer moves into an existing service location that requires a PRV or when the Company increases pressures in an existing service area where the former normal pressures did not require a PRV.

²⁸ As noted in the OCA's testimony and Main Brief, this process has been successfully used before. Following PAWC's 2013 base rate case (R-2013-2355276), PAWC met regularly with OCA to provide updates on the progress of extensions under Rule 27.1(F). OCA M.B. at 107; OCA St. 7SR at 8-9.

OCA St. 7SR at 2. In its testimony, PAWC witness Runzer addressed whether new customers in existing service locations would be addressed by the new program:

[W]e're considering [that] our plan initially is to do an annual notification, but being sensitive to the fact some customers may move into those areas and not know, we also want to link that to move-ins as much as possible to target in between when a customer may have moved into those areas.

Tr. 2055. This would address the first scenario the OCA is concerned about, so the remaining need is for PAWC to notify customers if it changes pressures for an existing pressure area such that customers newly require a PRV. As stated in the OCA's brief, there should be targeted notices for move-ins and notice if, for operational reasons, the Company increases regular operating pressures above 100 psi. OCA St. 7SR at 2. The Commission should direct the notification agreed to by PAWC – with the OCA's addition – as a part of any authorized rate increase to ensure that consumers are receiving reasonable service. 66 Pa.C.S. §§ 523, 1501, 1505; *Pa. PUC v. Pennsylvania Gas & Water Co.*, 74 PUR4th 238, 244-45 (Pa. PUC 1986); *Pa. PUC v. Philadelphia Gas Works*, 2000 Pa. PUC LEXIS 876, *41-44 (Order Nov. 22, 2000).

XIII. MISCELLANEOUS

A. Customer Notices Related to Rate Changes

See the OCA's Main Brief at 108-09.

B. Tariff Changes (not addressed above)

The OCA is not briefing this issue.

XIV. CONCLUSION

In summary, PAWC has not affirmatively demonstrated the reasonableness of every element of its claims for rate base, revenues and expenses, rate of return, capital structure, Wastewater revenue allocation, cost of service allocation, rate design, deferred accounting treatment, and alternative ratemaking. Accordingly, it is well within the discretion of the ALJs and the Commission to deny, and the ALJs and the Commission should deny, PAWC's ratemaking claims and requests in this proceeding that are challenged by the OCA.

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Respectfully submitted,

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