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April 5, 2024

## **VIA eFILING**

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

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

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceedings is the **Reply Brief of Pennsylvania-American Water Company** (the “Reply Brief”).

As evidenced by the Certificate of Service, copies of the Reply Brief are being served upon Deputy Chief Administrative Law Judge Christopher P. Pell, Administrative Law Judge John Coogan, and all parties of record.

If you have any questions, please contact me directly at 215.963.5384.

Very truly yours,



Kenneth M. Kulak

KMK/tp

Enclosures

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

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a true and correct copy of the **Reply Brief of Pennsylvania-American Water Company** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code Section 1.54:

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF  
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**Before Deputy Chief Administrative Law Judge Christopher P. Pell and  
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## **I. INTRODUCTION AND OVERVIEW**

Pennsylvania-American Water Company (“PAWC” or the “Company”) files this Reply Brief in response to the Main Briefs filed by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Cleveland-Cliffs Steel (“CCS”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Pennsylvania-American Large Users Group (“PAWLUG”) and Victory Brewing Company (“Victory”).<sup>1</sup>

The central reason PAWC is seeking to increase its rates in this proceeding is the Company’s need to invest \$1 billion in its water and wastewater systems by mid-2025 to maintain safe and reliable service in accordance with evolving drinking water and environmental standards. No party disputes PAWC’s need to make these capital improvements, and all parties opposing the proposed rate increase agree that the Company’s planned investments are prudent and reasonable.

To a very large extent, the issues raised in the opposing parties’ Main Briefs were fully addressed in PAWC’s Main Brief, filed on March 26, 2024, and an extensive reanalysis of each subject is, therefore, unnecessary. However, as an aid to the Administrative Law Judges (the “ALJs”), this Reply Brief revisits certain of the key areas of disagreement.

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<sup>1</sup> The Borough of St. Lawrence, Commission on Economic Opportunity (“CEO”), and Exeter Township each filed letters stating that they would not be filing briefs and adopt the position of the OCA in this case. Similarly, the City of Scranton submitted a late-filed letter in lieu of brief opposing the proposed rate increase.

## II. SUMMARY OF ARGUMENT

Several parties criticize PAWC for seeking rate relief at this time and including in its revenue requirement several systems that PAWC expects to acquire by June 30, 2025.<sup>2</sup> Yet none of the parties question the core driver behind PAWC's proposed rate increase – the need to invest \$1 billion before the end of the fully projected future test year (“FPFTY”) in this case (June 30, 2025) – or contend that the PUC should deny the Company an opportunity to earn a reasonable rate of return. The Company has also continued to control costs despite high inflation, and the Company's proposed rates will not go into effect until 18 months after its last rate increase, despite certain parties' mistaken assertion otherwise.

Substantial evidence presented by PAWC in this proceeding fully justifies its requested revenue increase, and the Commission should reject each of the adjustments to the Company's rate base, revenue, expenses, and rate of return proposed by the other parties. The Company's rate design is based on the proper application of well-established ratemaking principles and will result in just and reasonable rates for all PAWC customers that should be approved by the Commission. The PUC should also approve PAWC's enhancements to its H2O Help To Others Program for low-income customers (the “H2O Program”), which are reasonable and in the public interest, and reject proposals for unwarranted expansions and changes to the H2O Program offerings. Finally, the service-related rate conditions and proposals recommended by the OCA and CAUSE-PA should be rejected because the record evidence confirms that PAWC is providing safe, adequate, and reliable water and wastewater service to over 780,000 customers in Pennsylvania.

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<sup>2</sup> These systems will be acquired from Audubon Water Company (“AWC”), the Butler Area Sewer Authority (“BASA”), Farmington Township (“Farmington”) and the Sadsbury Township Municipal Authority (“Sadsbury”).



### **III. OVERALL POSITION ON RATE INCREASE**

PAWC's requested rate increase must be seen in the broader context of the immense investments needed to address aging infrastructure in Pennsylvania and the rising costs of providing safe, reliable, and environmentally acceptable water and wastewater service. PAWC is seeking to increase rates as it is continuing to undertake the actions that the Commission and the Pennsylvania Department of Environmental Protection ("PADEP") expect of a responsible water and wastewater utility. PAWC is also taking a leading role in supporting Commission policy by helping the PUC and PADEP facilitate consolidation of the highly fragmented water and wastewater systems in Pennsylvania and resolve the significant challenges faced by small and/or troubled systems, as most recently evidenced by partnering with PADEP and with the support of the Commission to provide a creative and novel solution as an investor-owned utility acting as receiver for the failing East Dunkard Water Authority ("EDWA"). These and similar initiatives cost money and, accordingly, PAWC must periodically seek rate relief if it is to continue to be able to attract capital on reasonable terms.

As PAWC's President Justin Ladner acknowledged in his testimony, the Company is not oblivious to the concerns expressed by some of its customers over the frequency of its rate filings and the impact of rate increases. However, despite the \$1 billion that all parties agree PAWC should invest in its systems by mid-2025, under the Company's proposed rates, the average residential customer will pay less than \$3 per day for all of their water needs for drinking, cooking, cleaning, and sanitation, and the Company has proposed new initiatives to assist its low-income customers.

In its Main Brief, the OCA identifies three alternative "drivers" that purportedly make the Company's proposed rates and revenue allocation under Act 11 of 2012 ("Act 11") unreasonable: (1) PAWC's recommended return on equity ("ROE") and its purported "equity-

rich” capital structure, (2) PAWC’s inclusion of several water and wastewater systems in rate base that it expects to acquire prior to the end of the FPFTY, and (3) PAWC’s proposed alternative ratemaking mechanisms (the Revenue Decoupling Mechanism (“RDM”) and the Environmental Compliance Investment Charge (“ECIC”)).<sup>3</sup> Some parties oppose PAWC’s rate increase in its entirety, while other parties either propose adjustments or express concern regarding the pace and amount of PAWC’s rate increases and generally oppose the Company’s proposed alternative ratemaking mechanisms.

What the evidence demonstrates is that PAWC’s proposed rate increase is entirely just and reasonable. PAWC’s ROE was properly calculated to provide the Company with an opportunity to earn a reasonable return, and the OCA’s alternative hypothetical capital structure must be rejected consistent with well-established Commission precedent.<sup>4</sup> With respect to acquisitions, the PUC has routinely permitted PAWC to include acquisitions in revenue requirement that were pending during prior rate cases and the Company’s proposed two-step rate increase will ensure that the BASA system is not included in rates before PAWC closes on that acquisition.<sup>5</sup> And the Company’s RDM and ECIC will achieve a variety of goals consistent with the policy objectives of alternative ratemaking in the Commonwealth, including mitigating customer exposure to less frequent but more significant rate increases in a general base rate case.<sup>6</sup> Furthermore, the Company’s proposed Act 11 allocation is designed to be fair to all customers and will maximize the number of customers for whom services will fall below the desired 2% bill-to-income ratio.<sup>7</sup>

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<sup>3</sup> OCA Main Br., pp. 13-14.

<sup>4</sup> See Section VIII., *infra*.

<sup>5</sup> See Section IV.A., *infra*.

<sup>6</sup> See Section X., *infra*.

<sup>7</sup> See Section IX.B., *infra*.

More broadly, the OCA argues that fundamental ratemaking principles require the Commission to deny nearly 80% of PAWC’s proposed rate increase to protect consumer interests, and that “there may be circumstances where the rates are outside of a normal range of reasonableness, but the regulators must still fairly balance the interests of all parties.”<sup>8</sup> The OCA’s theory is simply wrong, and the Commission made this crystal clear in cases during the COVID-19 pandemic. For example, in approving a rate increase by PECO Energy Company’s Gas Division in 2021, where the OCA argued in favor of denying any rate increase and setting rates “outside a zone of reasonableness,”<sup>9</sup> the Commission rejected the OCA’s arguments and explained:

We shall deny the Exceptions of the OCA and CAUSE-PA advocating outright denial of any rate increase to PECO at this time. We adopt the ALJ’s well-reasoned approach to exercise our broad discretion to consider the variety of factors influencing the determination of just and reasonable rates. Consistent with our prior rate orders issued during the COVID-19 pandemic, we have carefully examined through the lens of balanced and informed judgment, how the rates approved today will impact both customers and PECO. We reiterate our opinion stated in *Columbia Gas*, that the continued use of traditional ratemaking methodologies during this pandemic is consistent with the setting of just and reasonable rates and the constitutional standards established in *Bluefield* and *Hope Natural Gas*, and the pandemic does not change the continued application of these standards.

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We agree with the ALJ that our evaluation of PECO’s rate increase request must extend beyond the potential effect upon customers in the context of the COVID-19 pandemic and consider the utility’s financial condition – achieving the statutorily derived rates balance under traditional ratemaking. Consistent with our approach in *Columbia Gas*, we will not forego the use of our traditional ratemaking methodologies for setting a public utility’s base rates

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<sup>8</sup> OCA Main Br., p. 20; *see also id.*, p. 17.

<sup>9</sup> *Pa. P.U.C. v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Opinion and Order entered June 22, 2021), p. 24 (noting OCA argument that “that the Commission can set utility rates outside the traditional zone of reasonableness because an unspecified number of customers might not be ‘willing and able’ to pay any rate increase”).

due to the impact of and uncertainty surrounding this pandemic. However, we emphasize that after careful review of the applicable legal standards, constitutional standards, and our prior rate orders, this Commission “has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky II*, 683 A.2d at 961. Included in our broad ratemaking authority is the authority to approve alternative rates and rate mechanisms, including formula rates as well as decoupling mechanisms, performance-based rates, and multi-year rate plans. 66 Pa. C.S. § 1330(b)(1)(i)-(v).<sup>10</sup>

The cases from last century that the OCA highlights do not support any different result now. For example, the OCA repeatedly references *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968) (“*Permian Basin*”), which involved the setting of area-wide rates for multiple natural gas producers in the Permian Basin in Texas and New Mexico and is routinely cited for the established principle that “any rate selected . . . from the broad zone of reasonableness . . . cannot properly be attacked as confiscatory.”<sup>11</sup> While the OCA acknowledges that principle, it also emphasizes language in *Permian Basin* that “[t]he consumer is obliged to rely upon the [Federal Power Commission] to ‘provide a complete, permanent and effective bond of protection from excessive rates and charges,’” quoting *Atlantic Refrigeration Company v. Public Service Commission of New York*, 360 U.S. 378 (1929). *Permian Basin* does not support the broad proposition PAWC’s rates must be rejected to protect customers. Relying on the quoted language, the United States Supreme Court only held that the Public Utility Commission of Texas was not compelled to use a particular “field price” that was divorced from the producers’ actual costs due to automatic escalators and other market imperfections.<sup>12</sup> The OCA also asserts that *Permian Basin* requires the Commission to reject the Company’s rate request to protect

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<sup>10</sup> *Id.*, pp. 27, 29.

<sup>11</sup> *Permian Basin*, 390 U.S. at 770.

<sup>12</sup> *Id.* at 795.

“future, as well as present, consumer interests.”<sup>13</sup> *Permian Basin*, however, determined that a dual rate structure that encouraged investment and exploration was protective of present and consumer interests.<sup>14</sup> The Commission should similarly find that the Company’s proposed rates are necessary to support infrastructure improvements to protect present and future customers. In addition, in *Market Street Railway Company. v. Railroad Commission of State of California*, 324 U.S. 548, 556 (1945), the Court denied a full rate increase to a failing streetcar business overtaken by technological developments where the evidence showed “long-time neglect, mismanagement, and indifference to urgent public need,” which is clearly not applicable to PAWC in this proceeding.

The OCA’s additional contention in its Main Brief (p. 18) that PAWC is “overvaluing” its rate base through fair market value acquisitions to create “excess upon excess” is also without merit. As the OCA acknowledges in a footnote, the Commission approved all ten of the Company’s acquisitions of water and wastewater systems already acquired under Section 1329 of the Public Utility Code<sup>15</sup> and the associated ratemaking rate base.<sup>16</sup> Notably, the OCA does not mention that those Section 1329 acquisition proceedings were resolved by a settlement approved by the PUC, and the OCA was a party to each of those settlements. And the OCA joined the BASA acquisition settlement approved by the Commission on November 16, 2023.<sup>17</sup>

As PAWC witness and former chair of the Massachusetts Department of Public Utilities Paul Hibbard testified, the “regulatory compact” metaphor the OCA tries to transform into a

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<sup>13</sup> OCA Main Br., pp. 7, 17 (citing *Permian Basin*, 390 U.S. at 798).

<sup>14</sup> *Permian Basin*, 390 U.S. at 798-99.

<sup>15</sup> 66 Pa.C.S. § 1329. Hereafter all references to a “Section” are to the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. §§ 101 et seq., unless indicated otherwise.

<sup>16</sup> OCA Main Br., p. 18 & n. 6.

<sup>17</sup> PAWC St. 1-R, p. 23.

“public policy choice”<sup>18</sup> does not provide any support for the OCA’s contention that rates can be set outside of the zone of reasonableness. As Mr. Hibbard explained:

No description of a “regulatory compact” can take the place of long-standing principles and precedent applied by the Commission in setting rates. The Commission identifies these principles in describing the legal framework for its decision in every rate case. They are neither ambiguous nor subject to reinterpretation. In short, the utility is allowed to recover its used and useful and prudently-incurred costs and investments, and must be given the opportunity to earn a reasonable return on the capital it commits to discharge its public service obligations. *Hope* and *Bluefield* clearly establish the fundamental obligation to allow a utility an opportunity to recover its costs and earn a fair return on equity (one attendant to the risks experienced by similarly situated companies), and an overall return on investment that allows the utility to maintain financial integrity and maintain credit. Consistent with these obligations, the Commission exercises its judgement to achieve the correct balance of utility and consumer interests, and determine just and reasonable rates based on the company’s filing and record evidence.

The presentation of Ms. Hoover’s view of what the “regulatory compact” might be in this proceeding only provides a manufactured premise for Ms. Hoover and the OCA to argue for their disallowance recommendations, a premise that starts with the erroneous presumption that the whole ratemaking process in Pennsylvania and/or the Commission’s exercise of its jurisdictional responsibilities are structurally biased in favor of regulated utilities. In the end, the OCA’s application of this viewpoint leads to recommendations that are inconsistent with the appropriate application of ratemaking principles and precedent.<sup>19</sup>

Lastly, the OCA highlights the comments of customers at public input hearings who testified against the rate increase. But the OCA entirely fails to acknowledge in its Main Brief

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<sup>18</sup> OCA Main Br., p. 19.

<sup>19</sup> PAWC St. 16-R, pp. 12-13. When asked for the basis of her belief that the “regulatory compact” was “guiding policy” and generally accepted by stakeholders in Pennsylvania’s regulatory community during cross-examination, Ms. Hoover was not able to identify any statute or regulation referencing the “compact” and believed that the “compact” was accepted by stakeholders in Pennsylvania because she had not heard anyone deny it. Tr. 2169-2172.

more than fifty customers who testified regarding the excellent service of the Company, as well as the work done by the Company to address individual service complaints.<sup>20</sup>

In sum, the Company has met its legal burden in these proceedings and established that its proposed rate increase is just and reasonable.

#### **IV. RATE BASE**

In its Main Brief (pp. 11-12), PAWC provided an overview of its rate base claims and pointed out that only two rate base items remain in dispute. First, witnesses for I&E, the OCA and the OSBA propose adjustments to PAWC's plant-in-service balances at June 30, 2025 based on their objections to the Company's claim for rate recognition of the AWC, BASA, Farmington and Sadsbury systems that PAWC expects to acquire before the end of the FPFTY. Second, the OCA disagrees with the service life/survivor curve information used in PAWC's depreciation studies for its water operations and BASA wastewater operations and proposed adjustments to the Company's claimed depreciation reserve. PAWC responds to I&E's, the OCA's and the OSBA's discussion of those contested issues below.

##### **A. Utility Plant-In-Service**

There is no disagreement as to PAWC's claimed plant-in-service except with respect to various parties' position that the AWC, BASA, Farmington, and Sadsbury acquisitions should not be in the revenue requirement (including rate base) in this case. The OCA has unequivocally described the \$1 billion PAWC plans to invest in its systems as necessary "to ensure the provision of safe, adequate, and reliable service, and in the interest of consumers."<sup>21</sup>

Nonetheless, the OCA continues to press its proposed disallowances of revenue requirement

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<sup>20</sup> PAWC St. 1-R, pp. 9-12; PAWC St. 2-R, pp. 18-54; PAWC St. 15-R, pp. 13-15. CAUSE-PA's allegations regarding the Company's communications with some individuals who spoke at the public input hearings are addressed in Section XII.A., *infra*.

<sup>21</sup> OCA Main Br., p. 13; *see also id.*, pp. 10, 16.

related to the AWC, BASA, Farmington and Sadsbury acquisitions that, as explained in PAWC's Main Brief (pp. 12-16), are reasonably likely to close before the end of the FPFTY. PAWC properly included those acquisitions in its claimed rate base.

As initially filed, PAWC's revenue requirement included several acquisitions that had not yet closed: the Brentwood wastewater system, the BASA wastewater system, the Sadsbury wastewater system, the AWC water system, and the Farmington water and wastewater systems. In oral rejoinder offered at the evidentiary hearings, PAWC agreed to remove the Brentwood system from its rate claim.<sup>22</sup> For ease of reference, the remaining acquisitions (BASA, Sadsbury, AWC and Farmington) will be referred to as the "Acquisitions."

I&E contends that PAWC prematurely included the Acquisitions in its requested rate relief because those transactions have not yet closed and "allowing recovery of pending acquisitions, regardless of the status of the actual acquisition, is not in the public interest."<sup>23</sup> The OSBA contends that the AWC acquisition should be removed from PAWC's rate case if the Commission does not issue a final order in that proceeding before the record closes in this case.<sup>24</sup> The OCA contends that PAWC must demonstrate, by the close of the record, that the Acquisitions are reasonably certain to close during the FPFTY.<sup>25</sup>

PAWC's primary dispute with I&E, OSBA and the OCA concerns timing. As explained in PAWC's Main Brief (pp. 12-16), including assets in a rate case is appropriate if those assets will be used and useful by the end of the FPFTY.<sup>26</sup> The Commission should not find that closing on an acquisition must occur prior to the closing of the record in a rate case. Instead, when the

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<sup>22</sup> Tr. 1970.

<sup>23</sup> I&E Main Br., p. 12.

<sup>24</sup> OSBA Main Br., p. 10.

<sup>25</sup> OCA Main Br., p. 22.

<sup>26</sup> See also *Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a*, Docket No. L-2012-2317273 (Notice of Proposed Rulemaking Order entered June 17, 2021), p. 8 (Act 11 allows a public utility to include in its rate base facilities that are projected to be in service during the FPFTY).



Commission enters its final order in this proceeding, it should review the status of the Acquisition proceedings and determine whether closing is reasonably certain to occur before the end of the FPFTY.

The Commission's regulations at 52 Pa. Code § 5.408 allow the PUC to take official notice of facts even after the record has closed. When the Commission issues its final order in this case, it should take official notice of the status of the Acquisition proceedings to determine whether the acquisitions are reasonably certain to close before the end of the FPFTY. For example, with respect to the Sadsbury acquisition, a review of the PUC's records at that time could show that the Commission has entered a final order approving the proposed unanimous settlement in that proceeding. If so, considering that the settlement is unanimous, it is unlikely that the Commission's decision will be appealed. PAWC witness E. Christopher Abruzzo testified that closing could occur within two weeks after the Commission enters a final, unappealable order in the Sadsbury acquisition proceeding.<sup>27</sup> Under these circumstances, the Commission should find that the acquisition is reasonably certain to close by the end of the FPFTY.

Similarly, until a final decision is entered, 52 Pa. Code § 5.571 allows a party to file a petition to reopen the record for the purpose of taking additional evidence. If, for example, the Commonwealth Court issues a decision affirming the Commission's order approving the BASA acquisition, PAWC could file a Petition to Reopen the Record so that the Commonwealth Court's Order could be entered into the record. Furthermore, PAWC could file a Petition to Reopen the Record so that it could introduce evidence demonstrating that the Commonwealth Court's Order has become final and unappealable and/or that the transaction has closed. If a

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<sup>27</sup> PAWC St. 6-R, p. 4.

Commonwealth Court order affirming the Commission's decision becomes final and unappealable before the Commission enters its final decision in this base rate proceeding, the Commission should find that PAWC is reasonably certain to close on the BASA acquisition by the end of the FPFTY.

In its Main Brief (pp. 24-25, 29), the OCA discusses several examples of acquisitions that did not close after the Commission issued an order approving the acquisition. The OCA also argues that most acquisition agreements allow parties to terminate the transaction before closing.<sup>28</sup> These arguments, however, miss the mark. The record contains no examples of an acquisition in which the buyer and seller pursued an acquisition to the point of achieving a final unappealable Commission or Court order approving the transaction, and then walked away from the deal and failed to close on the transaction. Additionally, Mr. Abruzzo testified that PAWC and all of the sellers in the acquisitions listed above continue to be committed to the transaction.<sup>29</sup>

For all of the above reasons, when the Commission enters its final order in this proceeding, it should determine whether the Acquisitions are reasonably certain to close during the FPFTY. If they are reasonably certain to close before the end of the FPFTY, PAWC should be allowed to include them in rates established in this case. Any other decision will create unreasonable regulatory lag and incentivize more frequent rate case filings to timely reflect acquisitions.

If, however, the Commission agrees with OCA, I&E and OSBA with respect to the certainty of closing the BASA acquisition, PAWC's proposed two-step rate increase structure

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<sup>28</sup> OCA Main Br., pp. 27-28.

<sup>29</sup> Tr. 1992.

addresses this concern.<sup>30</sup> Step 1 rates would become effective on August 7, 2024 (the end of the normal suspension period in this case).<sup>31</sup> Step 2 rates would become effective on one day's notice, no earlier than August 7, 2024, and only after the Company has certified to the Commission that it closed on the BASA acquisition. If, for any reason, the BASA acquisition does not close, Step 2 rates would never become effective. This step methodology ensures that customers are protected by not allowing any rate changes to occur until the Company has closed on the purchase of the BASA system.

The OSBA also recommends a rate “mitigation adjustment” for BASA that would cap the BASA-related revenue requirement and, in connection with OSBA’s proposed disallowance of allocating BASA-related shortfall in revenue requirement pursuant to Section 1311(c), impute such revenues to PAWC shareholders.<sup>32</sup> The OSBA takes this position knowing that the PUC previously rejected a similar request<sup>33</sup> and willfully mischaracterizes the terms of the BASA settlement in a misguided attempt to bolster its position. OSBA relies on the fact that PAWC agreed to *propose* rates at the lower of 1.4 times current BASA rates or the proposed Rate Zone 1 rates to imply that the Commission *must limit* BASA rates to this amount and that PAWC agreed that any resulting shortfall in revenue would be imputed to its shareholders.<sup>34</sup> That is not accurate. PAWC agreed that it would propose moving BASA rates to 1.4 times the lower of current BASA rates or 1.4 times PAWC’s proposed Rate Zone 1 rates – which it did in this case

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<sup>30</sup> PAWC St. 1-R, p. 4; Tr. 1970.

<sup>31</sup> The Company included the AWC, Sadsbury, and Farmington acquisitions in Step 1 rates because Section 1102 acquisitions are generally not as politically charged as Section 1329 fair market value transactions and have historically been favored by the Commission because they will address service problems and promote regionalization and consolidation. *See* Tr. 1992-93. In addition, the revenue requirement impact of including the AWC, Sadsbury, and Farmington acquisitions in this case is about \$1.6 million compared to \$25.32 million for BASA. *See* PAWC Main Br., App. A.

<sup>32</sup> OSBA Main Br., pp. 8-9.

<sup>33</sup> *See* PAWC Main Br., p. 17; *PAWC 2020*, pp. 80-83.

<sup>34</sup> OSBA Main Br., pp. 8-9.

– but the Commission has the authority to set rates at an amount that it determines are reasonable.<sup>35</sup> Moreover, the parties and Commission clearly recognized that the terms of the BASA settlement would result in a revenue shortfall and that PAWC might propose in a future rate case to allocate such shortfall to water customers.<sup>36</sup> The Commission should therefore reject OSBA’s proposed mitigation adjustment, consistent with its decision in *PAWC 2020*.

**B. Depreciation Reserve**

No other party addressed depreciation reserve in their Main Brief.

**C. Cash Working Capital**

I&E’s and the OCA’s Main Briefs confirm that they do not dispute the methodology PAWC used to establish its cash working capital requirements.<sup>37</sup> The adjustments proposed by I&E and the OCA are concomitant to their proposed adjustments to PAWC’s operating and maintenance (“O&M”) expenses. As explained in PAWC’s Main Brief (pp. 21-33) and Section VI below, those proposed O&M expense adjustments should be rejected.

**D. Conclusion**

For the reasons set forth above, the PUC should reject the proposed adjustments to PAWC’s rate base claims.

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<sup>35</sup> See *Application of Pa.-American Water Co. under Sections 1102(a) and 1329 of the Pa. Pub. Util. Code*, Docket No. A-2022-3037047 (Recommended Decision issued Sept. 14, 2023), pp. 42-43 (“ [I]n the first base rate case in which the System is included in PAWC’s rate base, PAWC will *propose* to move the System to 1.4 times the current System rate or PAWC’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower. As a result, PAWC argues that the Settlement could reduce the Transaction’s rate impact for BASA customers by more than one-half, consistent with the concept of gradualism – *noting that actual rates will be set in a future base rate case.*”) (emphasis added).

<sup>36</sup> See *Application of Pa.-American Water Co. under Sections 1102(a) and 1329 of the Pa. Pub. Util. Code*, Docket No. A-2022-3037047 (Recommended Decision issued Sept. 14, 2023), pp. 44-45; *Application of Pa.-American Water Co. under Sections 1102(a) and 1329 of the Pa. Pub. Util. Code*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16, 2023), p. 31 (“PAWC stated that the transaction will only result in an increase in rates for its existing water customers, if in a future rate case, the Commission determines that an allocation of PAWC’s wastewater revenue requirement to the water customer base is in the public interest.”).

<sup>37</sup> See I&E Main Br., p. 15; OCA Main Br., p. 33.

## V. REVENUES

The Company's pro forma revenue claims are described in the Company's Main Brief (pp. 20-21) and detailed in the direct and rebuttal testimony of Company witness Charles B. Rea (PAWC Statements 10 and 10-R) and PAWC Exhibit No. 3-A Revised. The OCA and I&E both propose revenue adjustments concomitant to their proposals to exclude the AWC, BASA, Farmington and Sadsbury systems from this case.<sup>38</sup> The Commission should reject the proposed exclusion of revenues from these systems for the reasons set forth in Section IV.A. above.<sup>39</sup>

I&E also proposes an increase in the Company's Other Operating Revenue to reflect additional late payment revenue.<sup>40</sup> This is a concomitant adjustment to I&E's proposed rate increases for the sanitary sewer system ("SSS") and combined sewer system ("CSS") wastewater groups, respectively, which the Company opposes and is addressed in Section IX.C.3. below.<sup>41</sup> OSBA's proposed BASA mitigation adjustment is addressed in Section IV.A. above. The Company also continues to oppose OCA's proposal to "impute" revenue from American Water Resources ("AWR") for the reasons set forth in Section XII.E.2.e. of PAWC's Main Brief. If the Commission determines that PAWC cannot continue its long-standing on-bill arrangement with AWR (which should be denied for the reasons set forth in Section XII.E. of PAWC's Main Brief and this Reply Brief), the associated revenues must also be removed from the Company's revenue requirement.<sup>42</sup>

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<sup>38</sup> See I&E Main Br., p. 22; OCA Main Br., p. 34.

<sup>39</sup> See also PAWC Main Br., pp. 12-16.

<sup>40</sup> I&E Main Br., p. 23.

<sup>41</sup> See PAWC St. 10-R, p. 63. The Company does not oppose I&E's method of calculating late fee revenues, but the proposed increase in Other Operating Revenues should be rejected if the Commission rejects I&E's proposed increases in rates for SSS and CSS customers.

<sup>42</sup> See PAWC St. 1-R, pp. 20-21.

Finally, CAUSE-PA recommends that the Commission reject PAWC's revenue proposal in its entirety.<sup>43</sup> CAUSE-PA makes this recommendation despite stating that it "did not take a specific position as to the revenue requirement in this proceeding," and without providing any support (or even one citation to the record).<sup>44</sup> This recommendation should therefore be denied.

## **VI. EXPENSES**

I&E, the OCA, the OSBA and PAWLUG have proposed a number of adjustments to PAWC's claimed levels of O&M expenses. As discussed at length in PAWC's Main Brief (pp. 21-33), the Company's claims are reasonable and fully supported by record evidence. In contrast, the opposing parties' recommendations are unsubstantiated and, therefore, should be rejected. A reanalysis of each issue is unnecessary in light of PAWC's extensive discussion of the opposing parties' adjustments in its Main Brief. However, the following comments are offered in response to specific arguments advanced in non-Company Main Briefs.

### **A. Payroll Costs – Vacancy Rate**

As explained in PAWC's Main Brief (pp. 21-22) and the OCA's Main Brief (p. 35), the Company accepted OCA witness Ralph C. Smith's vacancy rate adjustment and updated its payroll expense claim<sup>45</sup> accordingly. No other party addressed vacancy rate adjustments in their Main Brief.

### **B. Annualized Performance Pay (PAWC)<sup>46</sup>**

As explained in the Company's Main Brief (pp. 22-23), performance pay is an integral part of the market-based compensation package that is necessary to attract and retain dedicated

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<sup>43</sup> CAUSE-PA Main Br., p. 18.

<sup>44</sup> *See id.*

<sup>45</sup> The Company's claimed payroll expense includes (1) salaries and wages (including performance compensation); (2) group insurance; (3) other benefits (401k, Defined Contribution Plan and Employee Stock Purchase Plan); and (4) payroll taxes.

<sup>46</sup> The OCA's proposed adjustments to annualized performance pay are concomitant to Mr. Smith's recommended vacancy rate addressed in Section VI.A. above.

and highly qualified employees. The OSBA and PAWLUG propose downward adjustments to the Company's performance pay claim of \$10.4 million<sup>47</sup> and approximately \$2 million, respectively. OSBA witness Kevin C. Higgins asserts that rewards for "financial performance" should be funded by shareholders and recommends disallowance of (1) 50% of the compensation earned by PAWC employees under the American Water Annual Performance Plan ("APP"); and (2) 100% of the compensation earned by PAWC employees under the American Water Long-Term Performance Plan ("LTPP").<sup>48</sup> PAWLUG witness Billie S. LaConte also proposes adjustments to disallow performance compensation she believes is tied to meeting financial targets.<sup>49</sup>

The OSBA's and PAWLUG's proposed disallowances are contrary to Commission precedent, which is directly on point. As explained in PAWC's Main Brief (pp. 22-23), the PUC has determined that a utility's performance compensation costs are properly included in operating expenses for ratemaking purposes where the compensation program *as a whole* includes both financial and operating performance goals that benefit customers.<sup>50</sup> In all of those prior decisions, the Commission declined to parse the degree of customer benefit that a performance compensation plan produces, weigh those benefits against alleged "shareholder" benefits, and permit recovery of some – but not all – of the utility's costs. Importantly, PAWC's performance-based compensation expense, including APP and LTPP, was recently reviewed and

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<sup>47</sup> OSBA's proposed adjustment includes the estimated impact on payroll tax expense. OSBA Main Br., p. 13.

<sup>48</sup> *Id.*, pp. 10-12.

<sup>49</sup> PAWLUG Main Br., p. 6.

<sup>50</sup> See, e.g., *Pa. P.U.C. v. Aqua Pa., Inc.*, Docket No. R-2021-3027385 and R-2021-3027386 (Opinion and Order entered May 16, 2022) ("*Aqua 2022*"), pp. 100-01; *Pa. P.U.C. v. UGI Utils., Inc. – Elec. Div.*, Docket No. R-2017-2640058 (Opinion and Order entered Oct. 4, 2018), pp. 73-74; *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012), p. 26; *Pa. P.U.C. v. Aqua Pa., Inc.*, Docket No. R-00072711, pp. 20-21 (Order entered July 31, 2008); *Pa. P.U.C. v. PPL Gas Utils. Corp.*, Docket No. R-00061398, p. 40 (Order entered Feb. 8, 2007).

approved by the Commission in PAWC's 2020 base rate proceeding.<sup>51</sup> The OSBA and PAWLUG do not address (or even acknowledge) this adverse precedent in their respective Main Briefs.

**C. Group Insurance Expense**

The OCA's proposed adjustments to group insurance expense concomitant to Mr. Smith's recommended vacancy rate are addressed in Section VI.A. above.

**D. 401K, Defined Contribution Plan and Employee Stock Purchase Plan<sup>52</sup>**

OSBA continues to propose an expense adjustment to disallow all Employee Stock Purchase Plan ("ESPP") costs (approximately \$450,000), contending that the ESPP's stock purchase discount should be funded by shareholders because there is no associated benefit to customers.<sup>53</sup> As explained in PAWC's Main Brief (p. 24), allowance of ESPP costs is appropriate because PAWC employees who become American Water shareholders have additional incentive to establish efficiencies that benefit customers.

**E. Stock-Based Compensation Expense – American Water Executives**

The OCA proposes adjustments to disallow (1) stock-based LTPP expense (approximately \$1.7 million) and (2) dividend equivalents (approximately \$31,000) paid to American Water's top executives claiming the expenses are not reasonable or tied to effective public utility service.<sup>54</sup>

Similar to the performance pay adjustments discussed in Section VI.B. above, the OCA's position is contrary to Commission precedent. Notably, the OCA completely ignores the recent approval of PAWC's performance-based compensation expense, including stock-based

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<sup>51</sup> PAWC 2020, pp. 50-53.

<sup>52</sup> The OCA's proposed adjustments to 401K, Defined Contribution Plan and ESPP concomitant to Mr. Smith's recommended vacancy rate are addressed in Section VI.A. above.

<sup>53</sup> OSBA Main Br., pp. 11-12; OSBA St. 1, p. 14.

<sup>54</sup> OCA Main Br., pp. 36-38.



compensation associated with the LTPP, in its Main Brief – even though that approval was cited by PAWC witness James Runzer in his rebuttal testimony.<sup>55</sup> Instead, the OCA cites to *Aqua 2022* where, as previously noted, stock-based compensation was approved, and attempts to distinguish the expense claim made by PAWC in this case. A careful read of the *Aqua 2022* decision, however, shows that OCA is simply recycling its failed arguments from that case. For example, OCA claims that a distinguishing factor between the Aqua claim and PAWC claim is that PAWC has “conceded that the stock-based compensation consists of [restricted stock units] and [performance stock units] and the compensation under the LTPP is linked to stock performance.”<sup>56</sup> However, the PUC-approved Aqua claim was also linked to stock performance.<sup>57</sup> OCA further asserts that Aqua’s stock-based compensation was linked to performance objectives, such as controlled costs, whereas PAWC’s stock-based compensation primarily benefits shareholders.<sup>58</sup> An objective review of the record in this case shows that PAWC has provided substantial evidence related to the same customer benefits that were highlighted by the PUC when it approved Aqua’s performance-based compensation: controlling costs, improving efficiency, promoting retention and promoting safe and reliable service.<sup>59</sup> For these reasons, and those presented in the Company’s Main Brief (pp. 24-25), PAWC’s performance based compensation, including stock-based compensation and executive perquisites, should be approved.

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<sup>55</sup> PAWC St. 2-R, p. 5.

<sup>56</sup> OCA Main Br., p. 37.

<sup>57</sup> *Aqua 2022*, p. 98 (“The OCA averred that Aqua’s stock-based compensation program provides Aqua and Essential Utilities executives with compensation based on the performance of the Company’s or parent company’s stock price.”).

<sup>58</sup> OCA Main Br., p. 37.

<sup>59</sup> PAWC Sts. 2, pp. 39-42 & 2-R, pp. 2-10.

**F. Executive Perquisites (AWW Executives Dividend Equivalents)**

OCA's proposed adjustments to PAWC's claimed O&M expenses to remove certain executive perquisites are addressed in Section VI.E. above.

**G. Payroll Taxes**

The OCA's proposed adjustments to payroll tax expense concomitant to Mr. Smith's recommended vacancy rate are addressed in Section VI.A. above. The OSBA's proposed performance pay adjustment includes the estimated impact on payroll tax expense and is addressed in Section VI.B. above.

**H. Insurance Other Than Group**

In its last base rate case, PAWC used a five-year average to smooth year-to-year variations in insurance other than group expense and that approach was not opposed by the OCA.<sup>60</sup> In this case, OCA witness Smith proposes using a single data point – the historic test year (“HTY”) to future test year increase – in lieu of the five-year average PAWC employed to derive its FPFTY expense claim.<sup>61</sup> In light of the variability of this expense, which Mr. Smith himself displays in his direct testimony,<sup>62</sup> using a five-year average continues to be the appropriate approach to smooth year-over-year variations.

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

In developing its uncollectible expense claim in this case, PAWC employed a two-year historic average (July 1, 2021 to June 30, 2023) ratio of net write-offs as a percentage of sales revenues (1.176%) to normalize the rate of uncollectible accounts to pre-pandemic levels and account for the application of Low-Income Household Water Assistance Program funds to

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<sup>60</sup> PAWC Main Br., p. 25.

<sup>61</sup> OCA Main Br., pp. 38-39.

<sup>62</sup> OCA St. 2, p. 64.

reduce unpaid balances.<sup>63</sup> In its Main Brief (p. 39), the OCA agrees that COVID-19 pandemic impacts should be eliminated from the historic average ratio of net write-offs used to determine PAWC's rate allowance for uncollectible expense. However, OCA witness Smith's proposed uncollectible rate of 1.164% is based on a three-year historic average that includes the March to June 2020 period when PAWC had several measures in place to help customers deal with the financial impact of the pandemic, including ceasing service terminations for non-payment.<sup>64</sup> For this reason, the OCA's proposed adjustment should be rejected.

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

PAWC's Miscellaneous Expense Adjustment included costs related to the AMP that was approved by the PUC on December 7, 2023, at Docket No. P-2021-3028195. The total cost of arrearage forgiveness is based on the average number of Bill Discount Program ("BDP") customers in the HTY with arrears multiplied by the annual AMP credits, assuming a 100% participation rate.<sup>65</sup>

OCA witness Roger Colton recommends a reduction in AMP credit cost recovery from PAWC's proposed \$2,377,200 to \$214,728. In testimony, Mr. Colton explained that this downward adjustment was the product of a two-step process: (1) adjusting projected AMP participation levels based on how many BDP customers make payments in "full and timely" payments (representing over \$2.1 million of the total adjustment);<sup>66</sup> and (2) adjusting for a historic BDP participant write-off rate of 17.9% (representing the remainder of the adjustment).<sup>67</sup> In oral rejoinder, PAWC witness Ashley E. Everette explained that Mr. Colton incorrectly

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<sup>63</sup> PAWC Main Br., p. 26.

<sup>64</sup> *Id.*; see also PAWC St. 8, pp. 3-5.

<sup>65</sup> PAWC Sts. 5, p. 26 (inclusion in Miscellaneous Expense Adjustment) & 5-R, p. 8 (identifying PUC approval order).

<sup>66</sup> 7,924 BDP participants with arrears greater than \$150 x Mr. Colton's recommended 11% participation rate x 100% grant of \$300 credit per year.  $7,924 \times 0.11 \times \$300 = \$261,470$  as compared to PAWC's claim of \$2,377,200.

<sup>67</sup> OCA Sts. 5, pp. 124-26 & 5-SR, pp. 25-27.

assumed that timely payments are required for a customer to be eligible for credits under the AMP.<sup>68</sup>

In its Main Brief (p. 40), OCA continues to propose its original expense reduction but conveniently fails to mention the “step one” adjustment representing the vast majority of its total adjustment or address Ms. Everette’s sound rebuttal to OCA’s methodology. As explained in PAWC’s Main Brief (p. 27), the PUC should reject OCA’s proposed reduction as unsupported. Importantly, if the AMP credits are lower than PAWC has projected in this case, the difference will be recorded to a regulatory liability and returned to customers in a future base rate case.<sup>69</sup>

#### **K. Acquisition-Related Expenses**

I&E and the OCA make concomitant adjustments to their proposed exclusion of the Acquisitions.<sup>70</sup> These adjustments should be rejected for the reasons set forth in Section IV.A. of this Reply Brief and PAWC’s Main Brief.

#### **L. Interest Synchronization**

This issue has been addressed fully in PAWC’s Main Brief (p. 28). The OCA’s interest expense adjustment should be rejected if the Commission does not adopt the OCA’s proposed adjustments to rate base and the Company’s capital structure.<sup>71</sup>

#### **M. Amortization Expense**

This issue has been addressed fully in PAWC’s Main Brief (p. 28). I&E’s and the OCA’s proposed adjustments to amortization expense are concomitant to I&E’s proposed exclusion of Sadsbury and Farmington and the OCA’s proposed exclusion of the Acquisitions.<sup>72</sup> The

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<sup>68</sup> Tr. 1977.

<sup>69</sup> PAWC Main Br., p. 27; PAWC St. 5-R, pp. 8-9.

<sup>70</sup> I&E Main Br., pp. 26-28; OCA Main Br., pp. 42.

<sup>71</sup> See also Sections IV and VIII of this Reply Brief and PAWC’s Main Brief.

<sup>72</sup> See I&E Main Br., p. 29; OCA Main Br., p. 43.

proposed adjustments to amortization expense should be rejected for the reasons set forth in Section IV.A. of this Reply Brief and PAWC's Main Brief.

**N. Call Center Expense**

This issue has been addressed fully in PAWC's Main Brief (p. 28). The OCA has not offered any valid reason why the call center expense that PAWC necessarily incurs to serve customers should be disallowed simply because it asserts that PAWC's third-party call handling agencies are not hitting performance metrics its witness Barbara R. Alexander believes should be imposed.<sup>73</sup>

**O. Depreciation Expense**

Setting aside depreciation expense adjustments associated with acquisitions, the OCA is the only party recommending an adjustment to depreciation expense. As explained in PAWC's Main Brief (pp. 17-19), Company witness John J. Spanos, President of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming"), utilized PUC-approved methods and PAWC's most recent service life studies when determining the annual depreciation accruals. OCA witness Smith's objection is not based on Mr. Spanos's *methods* – it is based on *outcomes* for a handful of cherry-picked plant accounts that Mr. Smith believes are unfavorable. Specifically, Mr. Smith only objects to the depreciation analysis for accounts where the service lives were determined to be shorter than Mr. Smith expected.<sup>74</sup> Mr. Smith's general preference for longer service lives and lower depreciation expense, however, is not a proper basis to reduce the Company's claim. The service lives and depreciation expense for *all* accounts were properly

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<sup>73</sup> The OCA misconstrues the holding of *Popowsky v. Pa. P.U.C.*, 674 A.2d 1149 (Pa. Commw. Ct. 1996) cited at page 43 of its Main Brief. In that case, the Commonwealth Court upheld the PUC's expense disallowance for third-party managerial services fees where the utility did not present any time records or wage information to substantiate the claimed amount. The Commission did not disallow the expense based on allegations of subpar performance of the contractor's work as the OCA appears to suggest.

<sup>74</sup> OCA Main Br., pp. 43-44.

determined utilizing the most current and complete information available.<sup>75</sup>

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

I&E alone proposes an adjustment to PAWC’s pension and OPEB expense claims to use a three-year historic average of actual costs instead of actuarial projections to “normalize” changes between rate cases.<sup>76</sup> As explained in PAWC’s Main Brief (pp. 31-32), historic costs do not correlate with future costs because economic and demographic variables used in actuarial projections change frequently. In fact, a rate allowance calculated using a three-year historic average (even excluding periods prior to 2018), as I&E witness Vanessa Okum proposes, rather than actuarial forecasts, would result in *larger* variances between the annual amount of pension and OPEB expenses reflected in base rates and the actual level of expenses PAWC incurs.<sup>77</sup> In addition, the PUC decisions cited by I&E on pages 34 and 36 of its Main Brief involved proceedings where utilities used cash contributions to their pension and OPEB plans as the ratemaking measure of expense allowances. However, as I&E’s own witness testified, PAWC calculates its pension and OPEB expense claims for ratemaking purposes on an accrual basis consistent with Financial Accounting Standards Codification 715.<sup>78</sup>

As detailed in PAWC’s Main Brief (pp. 29-31), pension and OPEB costs determined on an accrual basis are still difficult to predict and can materially increase or decrease from year-to-year. This fluctuation occurs because actuarial forecasts take into account numerous economic

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<sup>75</sup> PAWC Main Br., pp. 17-19; PAWC St. 11-R, pp. 5-10.

<sup>76</sup> See I&E Main Br., pp. 33-35.

<sup>77</sup> PAWC St. 8-R, pp. 6-8. In its Main Brief (p. 34), I&E repeats Ms. Okum’s criticisms of the comparative analysis of PAWC’s authorized and actual levels of pension and OPEB expense presented by Company witness J. Cas Swiz. While Ms. Okum is correct that PAWC’s base rate cases were resolved by black box settlement, PAWC used its claimed amounts based on actuarial forecasts as a representative figure for pension and OPEB expense embedded in rates to provide a comparison to actual costs. Mr. Swiz further explained that PAWC properly prorated the authorized pension and OPEB expense for calendar year 2021 based on the rate effective date. Tr. 2004-06.

<sup>78</sup> See I&E St. 1-SR, pp. 22, 25.

and demographic variables. PAWC's historical practice could result in under- or over-recovery by the Company and corresponding under- or overpayment by customers. Accordingly, PAWC is requesting PUC approval to defer any amounts above or below the forecasted FPFTY level of pension and OPEB expenses for accounting purposes and book the deferred amounts as a regulatory asset or liability.

In their respective Main Briefs, I&E, the OCA, and PAWLUG voice opposition to PAWC's proposed deferral mechanisms. Their discussion on this issue boils down to two basic arguments: (1) pension and OPEB expenses are normal and recurring costs that do not fall within the scope of the PUC's exception to the prohibition against retroactive ratemaking and (2) deferred accounting treatment will somehow guarantee recovery of those expenses without any review of prudence and reasonableness in a base rate case.<sup>79</sup> Neither argument is valid.

While I&E asserts that pension and OPEB costs are "routine" expenses incurred by all utilities, the extraordinary nature of a cost is determined by the event that triggers it.<sup>80</sup> As explained in PAWC's Main Brief (pp. 29-31), the pension and OPEB costs forecasted by PAWC's actuary are subject to material change based on a myriad of factors outside of the Company's control and are precisely the types of costs the Commission authorizes utilities to defer.

Deferred accounting authorization does not grant PAWC a "free-pass" to mismanage pension and OPEB expenses as the OCA contends.<sup>81</sup> Any deferred amounts (and offsets to those amounts) will be subject to detailed ratemaking review to determine prudence and reasonableness when they are claimed by the Company in its next base rate case.<sup>82</sup> Significantly,

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<sup>79</sup> See I&E Main Br., pp. 31-32; OCA Main Br., pp. 45-46; PAWLUG Main Br., pp. 7-8.

<sup>80</sup> *E.g., Popowsky v. Pa. P.U.C.*, 868 A.2d 606, 612 (Pa. Commw. Ct. 2004).

<sup>81</sup> See OCA Main Br., p. 46.

<sup>82</sup> PAWC Main Br., pp. 31-32.

the OCA's claim that deferred accounting authorization would increase rates "in unknown quantities" in future rate cases<sup>83</sup> ignores the record evidence showing that customers would have realized a net *benefit* of approximately \$104 million if pension and OPEB deferral mechanisms had been in place from 2012 through 2022.<sup>84</sup> In sum, PAWC's request for deferred accounting authorization is reasonable to ensure customers only pay for actual pension and OPEB costs incurred by the Company.

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

The arguments advanced by I&E, the OCA, the OSBA, and PAWLUG in opposition to PAWC's proposed deferral mechanism for production costs were fully rebutted in the Company's Main Brief (pp. 32-33). Consequently, the Company simply reiterates that the opposing parties ignore the ways in which PAWC's production costs closely resemble the kinds of costs that the PUC has authorized Pennsylvania energy utilities to recover under Section 1307 (e.g., purchased fuel and power). Those costs share a common characteristic with PAWC's production expenses that justify commensurate accounting treatment – changes in supplier prices that are beyond the utility's control.

**VII. TAXES<sup>85</sup>**

PAWC's claim for income taxes was explained in its Main Brief (p. 33) and by Company witness Melissa Ciullo in PAWC Statement No. 7. There are no contested income tax issues in this case.

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<sup>83</sup> See OCA Main Br., pp. 14-15.

<sup>84</sup> PAWC Main Br., p. 31; *see also* PAWC Ex. JCS-1R.

<sup>85</sup> The only contested issue raised relating to taxes other than income taxes pertains to payroll taxes, which is addressed in Section VI.G. above.



## VIII. RATE OF RETURN

### A. Summary

There is no dispute in this proceeding that, under the decisions of the United States Supreme Court and this Commission, PAWC is entitled to earn a reasonable rate of return and that rate of return “must be equal to that generally being made at the same time on investments in other business undertakings which are attended by corresponding risks and uncertainties.”<sup>86</sup>

There is also no dispute in this proceeding that inflation and interest rates in the U.S. economy remain high. Indeed, I&E witness D.C. Patel conceded that current market conditions are still characterized by high interest rates and costs.<sup>87</sup> While Mr. Patel may believe that reductions in interest rates are immediately ahead,<sup>88</sup> that is not what the evidence demonstrated. As PAWC noted in its Main Brief (p. 46), Federal Reserve Chairman Jerome Powell stated on the eve of hearings in these proceedings that progress toward the Federal Reserve’s inflation goals was not assured and that interest rates would not be cut until the Federal Reserve was “confident.”<sup>89</sup>

Despite these market conditions and interest rates projected to be above the Federal Reserve’s 2% goal until 2026, I&E witness Patel proposes a return on equity (“ROE”) of only 8.45%, well below any ROE awarded in this country since 2010 as well as the 9.75% ROE authorized by the Commission just over three months ago in Columbia Water’s recent base rate case.<sup>90</sup> For his part, OCA witness Garrett proposes an ROE of only 8.70% with the Company’s

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<sup>86</sup> *Bluefield Waterworks and Imp. Co. v. P.S.C. of West Virginia*, 262 U.S. 679, 692 (1923) (“*Bluefield*”); *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“*Hope*”); PAWC Main Br., pp. 34-35; cf. OCA Main Br., pp. 6-7; I&E Main Br., pp. 40-41.

<sup>87</sup> I&E St. 2-SR, p. 8.

<sup>88</sup> I&E St. 2, pp. 40-41.

<sup>89</sup> PAWC St. 13-RJ, p. 1.

<sup>90</sup> *Pa. P.U.C. v. Columbia Water Co.*, Docket No. R-2023-3040258 (Opinion and Order entered Jan. 18, 2024) (“*Columbia Water 2024*”), pp. 108, 113.

proposed capital structure, and just 9.1% with his hypothetical capital structure.<sup>91</sup> These clearly inadequate ROEs are the result of various errors and flawed applications of the ROE models established and accepted by the Commission.

Contrary to the claims of the opposing parties, PAWC's proposed ROE and capital structure is entirely reasonable. As PAWC explained in its Main Brief (pp. 43-52), correction of the errors in the calculations of the recommended ROEs with minor adjustments – indeed, in the case of OCA's Capital Asset Pricing Model ("CAPM") analysis, simply using the risk-free rate used by I&E – results in substantially different ROEs of 10% or more and closer to the 10.95% that PAWC witness Ann E. Bulkley recommended, after taking into account the Company's risks and superior management performance. In the remainder of this section, the Company addresses the errors in the ROE recommendations of the other parties not already addressed in PAWC's Main Brief.

## **B. Proxy Group**

PAWC witness Bulkley used a proxy group of water utilities and selected electric and gas utilities that met specific screening criteria, including a requirement that any electric utility in the proxy group also own water operations.<sup>92</sup> This larger proxy group was necessary due to the increasingly small number of water utilities suitable for use in cost of equity analyses.<sup>93</sup> The OCA did not agree with the inclusion of electric and natural gas utilities in its proxy group, but OCA witness Garrett used both a water-only proxy group (with the same water utilities used by Ms. Bulkley) and Ms. Bulkley's expanded proxy group in his analysis. While his cost of equity analysis was flawed for various reasons discussed in PAWC's Main Brief and below, he

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<sup>91</sup> OCA Main Br., p. 51.

<sup>92</sup> PAWC Main Br., pp. 38-39.

<sup>93</sup> *Id.*, p. 38.

concluded that the larger proxy group used by Ms. Bulkley and his small water utility-only proxy group did not lead to materially different results.<sup>94</sup>

In its Main Brief (pp. 42-47), I&E continues to argue for a small, five water utility-only proxy group that excludes Essential Utilities (the parent company of Aqua), includes American Water (PAWC's parent company), and excludes any electric or gas utility. With respect to Essential Utilities, I&E notably highlights the Commission's endorsement of I&E's position to **include** Essential Utilities in its proxy group in *Aqua 2022* (when Essential Utilities' income from water operations represented more than 50% of its revenues) as well the Commission's endorsement of I&E's position to **exclude** Essential Utilities in *Columbia Water 2024*, when the revenue Essential Utilities derived from its water operations fell below 50%.<sup>95</sup> However, I&E **ignores** the evidence presented by Ms. Bulkley that Essential Utilities' water operations are now generating more than 50% of its revenue and Essential Utilities should now be included in I&E's proxy group under I&E witness Patel's own screening criteria.<sup>96</sup> Similarly, with respect to the resulting circularity arising from the inclusion of American Water in Mr. Patel's proxy group, I&E asserts that the Commission has previously included a water utility's parent company in the determination of the water utility's ROE, but I&E fails to establish that any of those utilities were generating nearly a quarter of the parent company's revenue, as PAWC does.<sup>97</sup> Essential Utilities is thus properly included in a proxy group that will be used to establish the Company's ROE, and PAWC's parent, American Water, is properly excluded, just as Ms. Bulkley has done.

I&E also contends that inclusion of gas and electric utilities in the proxy group used to determine the ROE of PAWC can "distort" the information that the proxy group provides,

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<sup>94</sup> OCA Main Br., p. 48.

<sup>95</sup> I&E Main Br., pp. 45-46.

<sup>96</sup> PAWC St. 13-RJ, p. 3; *see also* PAWC St. 13-R, pp. 20-22.

<sup>97</sup> PAWC St. 13-RJ, p. 2.

arguing that electric and gas utilities are “dissimilar” because customers can shop for a supplier and the different utility industries face different risks.<sup>98</sup> As noted in PAWC’s Main Brief (p. 40), however, I&E witness Patel conceded that the risks of electric and gas utilities were different but not greater or lesser than water and wastewater utilities, and that water utilities had a variety of similar characteristics in the manner in which their rates are established.<sup>99</sup> Furthermore, I&E fails to address the effects of the small proxy group size and the skewed results arising from a single “outlier” such as Middlesex Water.<sup>100</sup>

In light of the dwindling number of water and wastewater utilities comparable to PAWC, the Commission should join other commissions around the country and approve the use of a larger proxy group that includes water, wastewater and selected electric and natural gas utilities that meet Ms. Bulkley’s criteria in order to reduce the effects of the inclusion or exclusion of a single company in the small proxy group advocated by I&E.<sup>101</sup>

### **C. Capital Structure**

PAWC witness Bulkley calculated the Company’s capital structure by using all debt issues and all sources of capital, and then determined the capital structure of both water and wastewater services by using wastewater-specific debt issuances and recalculating the ratios of the remaining capital stock. The resulting capital structures were 55.30% equity, 44.70% long-term debt, with 55.99% equity and 44.01% for water services and 52.87% equity and 46.73% debt for wastewater.<sup>102</sup>

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<sup>98</sup> I&E Main Br., p. 47.

<sup>99</sup> PAWC St. 13-RJ, p. 4.

<sup>100</sup> PAWC Main Br., pp. 34-38, 48.

<sup>101</sup> *Id.*, p. 39.

<sup>102</sup> *Id.*, p. 41.

As PAWC underscored in its Main Brief (p. 41), the Commission has made clear that “the use of an actual capital structure represents the Company’s decision, in which it has full discretion, on how to capitalize its rate base,” and hypothetical capital structures are not appropriate absent a finding that a utility’s capital structure is atypical or too heavily weighted on either the debt or equity side.<sup>103</sup> The Company’s proposed actual capital structure was well within the capital structures of Ms. Bulkley’s proxy group companies, which had a mean of 55.88%.<sup>104</sup> I&E witness Patel accepted the Company’s capital structure for his ROE calculations, which he found were within the range of his water utility-only proxy group.<sup>105</sup> The OCA, however, continues to advocate for a hypothetical capital structure for several reasons, none of which are correct.

First, the OCA contends that Ms. Bulkley’s proxy group comparison is inappropriate as Ms. Bulkley used the utility operating subsidiaries of holding companies for her capital structure analysis but used the holding companies themselves for her cost-of-equity calculations. The use of holding companies for cost of equity calculations is certainly standard practice.<sup>106</sup> But as PAWC highlighted in its Main Brief and Ms. Bulkley described in detail in her testimony, comparing holding company capital structures to PAWC – a utility operating subsidiary – instead of using the capital structures of other utility operating subsidiaries is inappropriate: holding companies have operations in multiple jurisdictions, which have a variety of unregulated operations and debt that is unrelated to utility operations.<sup>107</sup> Moreover, OCA witness Garrett’s assertion that PAWC’s proposed debt ratio is “too low as compared to the proxy group (49%)” or

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<sup>103</sup> *Aqua 2022*, pp. 138-39.

<sup>104</sup> PAWC Main Br., p. 42; PAWC St. 13, p. 61 & Ex. 13-A, Schedule 10.

<sup>105</sup> I&E Main Br., pp. 47-48.

<sup>106</sup> PAWC St. 13-SR, p. 11.

<sup>107</sup> PAWC Main Br., p. 42; PAWC St. 13-RJ, pp. 10-11.

PAWC's parent (55%) is again making the same erroneous comparison. The 49% calculation is an average of all of the holding companies in Ms. Bulkley's proxy group, while the actual average debt ratio of only the water utilities (Mr. Garrett's preferred proxy group) yields a debt ratio of 47.3%, with a corresponding equity ratio of 52.70%. And to the extent that the OCA relies on the capital structure of entirely separate industries (e.g., telecommunications), OCA witness Garrett's capital structure comparison is even less appropriate.<sup>108</sup>

Second, the OCA asserts that the Company's proposed capital structure should be adjusted to address "any discrepancy" between the capital structure of a utility and the proxy group, or PAWC's ROE should be lowered through the Hamada model.<sup>109</sup> For reasons already discussed, any "discrepancy" between the capital structure of the utility and OCA witness Garrett's proxy group is of his own making though the improper use of holding companies instead of utility operating subsidiaries. And his application of the Hamada model to reduce his ROE recommendation is similarly erroneous. In applying the Hamada equation, Mr. Garrett relied on the book value of the companies in Ms. Bulkley's proxy group, and not the market value of debt and equity as required by the Hamada equation. If he had instead relied on the market value of the debt and equity of each company in Ms. Bulkley's proxy group, he would have estimated a proxy group average debt ratio of 34.3%, not 49.1%.<sup>110</sup> Moreover, OCA's additional assertion that PAWC is proposing an ROE that exceeds the CAPM result is also not correct,<sup>111</sup> as OCA's CAPM result is understated for the reasons discussed in PAWC's Main Brief (pp. 49-50) and in Section VIII.E below.<sup>112</sup>

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<sup>108</sup> OCA Main Br., p. 49.

<sup>109</sup> *Id.*, p. 50.

<sup>110</sup> PAWC St. 13-R, pp. 75-76.

<sup>111</sup> OCA Main Br., p. 50.

<sup>112</sup> *See* PAWC Main Br., pp. 49-50.

Finally, the OCA cites several cases that purportedly support Commission adoption of its hypothetical capital structure,<sup>113</sup> but those cases are clearly inapposite. For example, in *Pennsylvania Public Utility Commission v. Carnegie Natural Gas Company*, the utility proposed to rely upon an actual capital structure of 93.39% equity, well above the level of comparable companies.<sup>114</sup> Similarly, in *Big Run Telephone Company vs. Pennsylvania Public Utility Commission*, the utility proposed a capital structure of 100% equity,<sup>115</sup> and in *T.W. Phillips Gas and Oil Company v. Pennsylvania Public Utility Commission*, the utility proposed a capital structure of 60.1% equity where the comparable group of utilities had a capital structure with 45% equity.<sup>116</sup> Such “atypical” differences clearly do not exist here, and the PUC should adopt the Company’s proposed actual capital structure and reject the OCA’s hypothetical capital structure.

#### **D. Cost of Long-Term Debt**

I&E witness Patel accepted the Company’s cost of long-term debt, and the OCA did not brief this issue.<sup>117</sup>

#### **E. Return on Equity**

In determining the cost of equity during periods of high inflation and interest rates, the Commission has made clear that “it is appropriate to consider the CAPM results to account for economic changes such as those occurring currently, in addition to the DCF results, to determine [a utility’s] ROE.”<sup>118</sup> That is exactly what PAWC witness Bulkley did. After determining a Discounted Cash Flow (“DCF”) range of 8.69% to 10.96% and a CAPM range of 10.15% to

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<sup>113</sup> OCA Main Br., pp. 50-51.

<sup>114</sup> *Pa. P.U.C. v. Carnegie Natural Gas Co.*, 433 A.2d 938 (Pa. Commw. Ct. 1981).

<sup>115</sup> *Big Run Tel. Co. v. Pa. P.U.C.*, 449 A.2d 86, 89 (Pa. Commw. Ct. 1982).

<sup>116</sup> *T.W. Phillips Gas and Oil Co. v. Pa. P.U.C.*, 474 A.2d 205, 211-12 (Pa. Commw. Ct. 1984).

<sup>117</sup> I&E Main Br., p. 48; OCA Main Br., p. 51; *see also* PAWC St. 13, pp. 59-60 & Schs. 11-13; PAWC St. 13-R, p. 11 & Schedule 14 (updating equity analysis).

<sup>118</sup> *Columbia Water 2024*, p. 107.

11.17%, Ms. Bulkley recommended an ROE of 10.95%, after taking into account the business, financial, and regulatory risks faced by PAWC, and its superior management performance in a variety of areas, including its acquisition and investment to address longstanding water quality and environmental compliance issues for the benefit of customers.<sup>119</sup>

In its Main Brief (pp. 43-51), PAWC described the flaws in the ROE analyses of both I&E witness Patel and OCA witness Garrett, and the substantial evidence in support of Ms. Bulkley's calculations. In this section, PAWC will address the arguments that I&E and OCA offer in support of their alternative results.

### **1. I&E's Position**

As discussed in PAWC's Main Brief (p. 48), I&E witness Patel's DCF calculation of 8.45% is flawed due to his limited proxy group, his reliance on a spot stock price instead of a 30-day average (as used by both Mr. Garrett and Ms. Bulkley in their DCF calculations), and his inclusion of Middlesex Water's unreasonable DCF result of 5.77% in his final calculations. Simply using a 30-day average, incorporating Essential Utilities in his proxy group consistent with its 2023 water-related revenues, as discussed in Section VIII.B. above, and excluding Middlesex Water, yields a DCF result of 9.21%.<sup>120</sup>

Similarly, Mr. Patel's CAPM calculation of 10.44% relied upon a 10-year Treasury rate instead of a 30-year Treasury rate more consistent with investment in utility plant assets, as well

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<sup>119</sup> Ms. Bulkley also calculated an ROE range from 10.73% to 11.50% using the Empirical Capital Asset Pricing Model ("ECAPM"). The ECAPM addresses the tendency of the "traditional" CAPM to underestimate the cost of equity for companies with low beta coefficients such as regulated utilities. PAWC St. 13, pp. 41-43. In response to criticisms of the use of ECAPM, Ms. Bulkley explained that the ECAPM was not duplicative, nor did it overstate market returns, and its use was accepted by a number of public utility commissions. PAWC St. 13-R, pp. 64-69.

<sup>120</sup> PAWC Main Br., p. 48; PAWC St. 13, p. 33.



as a historically low market return.<sup>121</sup> But even using the 10-year Treasury rate, simply including Essential Utilities in his proxy group increases his CAPM result to 10.71%.<sup>122</sup>

In its Main Brief (p. 51), however, I&E makes clear that Mr. Patel has not followed the Commission's direction regarding consideration of CAPM results in the current economic climate as he gave no weight to his CAPM results. Indeed, in its recitation of prior case law regarding the Commission's reliance on the DCF model in different market conditions, I&E entirely ignores the Commission's decisions in both *Aqua 2022* and even *Columbia Water 2024*, issued earlier this year.<sup>123</sup> And while I&E claims that Mr. Patel's 10.44% CAPM result "confirms the reasonableness of I&E witness Patel's 8.45% return under his DCF calculation," neither I&E nor Mr. Patel ever explained how.<sup>124</sup> As Ms. Bulkley noted, "the simple fact that there is a difference between the numbers does not provide a basis for which estimate better reflects the cost of equity; indeed, as Mr. Patel acknowledges, the difference between the I&E DCF and CAPM results in *Columbia Water* was greater than here (325 basis points compared to 199 basis points), and the Commission relied on the CAPM in determining the ROE for *Columbia Water*."<sup>125</sup>

In short, I&E has again done exactly what the Commission found fault with in both *Aqua 2022* and *Columbia Water 2024*: asserting that CAPM results were taken into consideration in its recommended ROE but then relying solely upon its DCF results. As the Commission explained in *Columbia Water 2024* (pp. 107-08, emphasis added):

Based on the record, we agree with the ALJs that it is appropriate to consider the CAPM results to account for economic changes

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<sup>121</sup> *Id.*, pp. 48-49.

<sup>122</sup> *Id.*

<sup>123</sup> I&E Main Br., pp. 54-55.

<sup>124</sup> *Id.*, p. 51.

<sup>125</sup> PAWC St. 13-R, pp. 27, 48-49 ("It is not reasonable for Mr. Patel to determine that the CAPM cannot be used simply because it is higher."). Notably, in *Columbia Water 2024*, I&E calculated a CAPM result of 11.09%. *Id.*, p. 49 n.57.

such as those occurring currently, in addition to the DCF results, to determine Columbia's ROE. As the ALJs noted, the CAPM is more responsive to changes in interest rates. R.D. at 59-60. **While I&E did use its CAPM as a comparison to its DCF result, I&E made no CAPM based adjustment to its final ROE recommendation.** I&E M.B. at 23. Additionally, we agree with the ALJs' comparison to *Aqua 2022*, wherein we stated, as follows:

We are persuaded by the arguments of Aqua that the ALJ erred by concluding I&E used its DCF *and* CAPM results to determine Aqua's ROE. **I&E did use its CAPM as a comparison to its DCF result, however I&E made no CAPM based adjustment to its final ROE recommendation.** I&E M.B. at 47.

Although I&E asserts that “[n]o evidence has been presented that would indicate [that] the DCF-only results presented by I&E witness Patel would understate PAWC’s current cost of equity capital,” I&E is not only ignoring the Commission’s recent decisions but also the extensive evidence demonstrating that the market conditions that supported the Commission’s continuing consideration of both DCF and CAPM results remain.<sup>126</sup> And while I&E argues that there are various “disadvantages” associated with the CAPM, the PUC and numerous other utility commissions have concluded that the CAPM model is appropriately used.<sup>127</sup> Properly adjusting Mr. Patel’s DCF and CAPM results as discussed above and then weighting those results 50/50 (which is less than the Commission appears to have weighted the CAPM result in *Columbia Water 2024*) would result in a base ROE of 9.96% using a water utility proxy group and 10.34% using a distribution utility proxy group, without consideration of any management performance adjustment.

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<sup>126</sup> PAWC Sts. 13, pp. 14-22 & 13-R, pp. 11-17.

<sup>127</sup> PAWC St. 13-R, pp. 31-32; PAWC Cross Ex. No. 2, pp. 89-90.

## 2. OCA's Position

Unlike I&E, the OCA and its witness, Mr. Garrett, endeavor to give weight to both DCF and CAPM results in the OCA's ROE recommendation, and the OCA primarily offers two criticisms of Ms. Bulkley's calculations. None of those criticisms should be given any weight by the Commission.

First, the OCA contends that Ms. Bulkley's DCF model results are "overstated" because she purportedly relied on "non-sustainable growth rate assumptions" and considered flotation costs in making her ROE recommendation.<sup>128</sup> In fact, the growth rate that Ms. Bulkley used *is lower* than the growth rate that OCA witness Garrett used in his own DCF calculation. The average growth rate for Mr. Garrett's water utility proxy group is 6.90%, while the average growth rate in Ms. Bulkley's DCF analyses was 6.19%, and both Mr. Garrett and Ms. Bulkley used growth rates projected over similar periods.<sup>129</sup> Presuming Mr. Garrett remains willing to rely upon his own methodology, there is no basis for suggesting that the earnings per share growth rates Ms. Bulkley relied upon are unsustainable or to reject her DCF calculation using these growth rates.<sup>130</sup>

Second, the OCA asserts that the risk-free rate of return used in his CAPM calculation was more reasonable, and repeats criticisms that Ms. Bulkley used an unreasonable risk-free rate of return. Mr. Garrett selected a business school survey equity risk premium ("ERP") of 5.7%, and then averaged that number with three other ERP values (from Kroll, Dr. Damadoran, and his own calculations of an implied ERP) to arrive at ERP of 5.3%. But as Ms. Bulkley explained, Mr. Garrett's approach suffered from several flaws:

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<sup>128</sup> OCA Main Br., p. 52.

<sup>129</sup> PAWC St. 13-R, pp. 54-55 & n. 61.

<sup>130</sup> PAWC St. 13-RJ, p. 7.

- His proposed ERP was inconsistent with the well-established inverse relationship between interest rates and market risk, which indicated that because the average risk-free rate relied upon by Mr. Garrett is below the long-term risk free rate, it stands to reason that the current ERP should be above a long-term average ERP of 7.17%, not below that number;
- The multi-stage DCF analysis used in calculating his implied ERP was inconsistent with the constant growth DCF analysis he used to calculate his DCF-based cost of equity; and
- The author of the survey he relied upon specifically stated that the ERP that Mr. Garrett cites from the survey cannot be interpreted as the required equity premium of the market.<sup>131</sup>

In surrebuttal testimony, Mr. Garrett did not address these criticisms. Instead, he simply asserted that Ms. Bulkley's ERP was higher than the three sources he used and therefore is not reasonable.<sup>132</sup> And in response to that testimony, as discussed in PAWC's Main Brief (p. 50), Ms. Bulkley presented the results of a Federal Bank of New York survey that considered a much broader sample of ERP estimates than the three considered by Mr. Garrett and demonstrated that her ERP was in fact reasonable. Further, the Federal Reserve study indicated that ERPs would generally be higher in times of inflation and higher interest rates.<sup>133</sup> Notably, the low ERP that the OCA advocates in this proceeding is consistent with the same low ERP rejected in *Columbia Water 2024*.<sup>134</sup> Simply substituting the ERP used by I&E witness Patel in Mr. Garrett's CAPM calculation results in a revised CAPM of 10.60% for his water utility proxy group, before any management adjustment, and an overall ROE of 10% when combined with his unadjusted DCF result.<sup>135</sup>

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<sup>131</sup> PAWC St. 13-R, pp. 55-62.

<sup>132</sup> OCA Main Br., p. 54; OCA St. 3SR, p. 5.

<sup>133</sup> PAWC St. 13-RJ, pp. 8-10.

<sup>134</sup> *Columbia Water 2024*, p. 93.

<sup>135</sup> PAWC St. 13-R, p. 60.

Finally, in arguing for its ROE recommendation of 9.1% (based on its hypothetical capital structure), the OCA suggests that its low ROE results could be acceptable because it falls within Ms. Bulkley’s overall range.<sup>136</sup> That proposal, which aligns with the same DCF-only position argued by I&E and is clearly inconsistent with the Commission’s recent decisions, should be rejected.

### **3. OSBA’s Position**

The OSBA did not provide an actual cost of equity analysis, and instead simply used the Commission’s current Distribution System Improvement Charge (“DSIC”) ROE for water and wastewater utilities of 9.65% as a “proxy” to calculate the OSBA’s recommended revenue increase of \$109,088,498.<sup>137</sup> The OSBA did not point to any record evidence demonstrating that 9.65% is a “proxy” for the investor-required ROE in the current capital markets. Although the OSBA did not “object, and would support” the lower ROEs proposed by the OCA and I&E, the OSBA did not establish that those lower ROEs are a valid estimates of the current cost of equity and did not submit any evidence to rebut the errors in the ROE calculations of OCA and I&E identified by the Company.

### **4. PAWLUG’s Position**

As with the OSBA, PAWLUG did not provide any cost of equity analysis upon which the Commission can rely. Instead, PAWLUG asserts that the Company’s proposed ROE is unreasonable because it exceeds a national “average” ROE of 9.4% for water utilities, the 10% ROE authorized by the Commission in *Aqua 2022* and the Commission’s current 9.65% DSIC ROE authorized for water and wastewater utilities. (PAWLUG also contends that the Company’s proposed ROE did not adequately take into account any possible adjustment if the

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<sup>136</sup> OCA Main Br., pp. 52-53.

<sup>137</sup> OSBA Main Br., p. 7.

Commission approves the Company's proposed RDM, ECIC, and deferral mechanisms, which is addressed in Section VIII.F. below.)

PAWLUG does not – and cannot – contend that the Commission can establish an ROE for PAWC in a base rate proceeding simply with reference to a national average, prior decisions, or the DSIC ROE. Such a generic determination would be inconsistent with the factors necessary to determine a reasonable rate of return under the established standards of *Bluefield* and *Hope* adopted by this Commission. PAWLUG's references do, however, underscore the inadequacy of the rates of return proposed by both the OCA and I&E in this proceeding and the necessity of the Commission to establish a proper ROE for the Company consistent with the recommendations of Ms. Bulkley.

## **F. Business Risks and Management Performance**

### **1. Business Risks**

As summarized in PAWC's Main Brief (p. 52), the Company faces a variety of risks associated with its capital expenditure program, environmental and water quality regulation, and other costs, including flotation costs. Several parties raise issues in their Main Brief with respect to PAWC's business risks, generally asserting that PAWC either (i) faces the same risks as all other water utilities, and its risks are either further reduced through the availability of the DSIC and other regulatory mechanisms in Pennsylvania or would be, if the RDM or ECIC were approved; and (ii) Ms. Bulkley improperly considered flotation costs in determining an ROE for PAWC.<sup>138</sup>

**Risk Comparison, the RDM and the ECIC.** As Ms. Bulkley explained, any risk comparison of water and wastewater utilities cannot be made simply with reference to general

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<sup>138</sup> See I&E Main Br., pp. 59-60; OCA Main Br., pp. 55-59; PAWLUG Main Br., pp. 9-12.

regulatory mechanisms but must be made in comparison to the proxy group.<sup>139</sup> In the case of PAWC, Ms. Bulkley recommends an ROE above the mean of her calculated ROE range in light of the billions of infrastructure investment that PAWC has planned, which will require external capital.<sup>140</sup>

Ms. Bulkley also determined that more than 59% of the companies in her proxy group have implemented some form of revenue decoupling mechanism and, as a result, PAWC has more risk than other companies in the proxy group without such a mechanism.<sup>141</sup> Given that alternative ratemaking mechanisms are commonplace in the industry, approval of the RDM simply moves PAWC towards a similar risk level as other companies in the proxy group and does not require a reduction in PAWC's ROE, as the OCA and PAWLUG suggest.<sup>142</sup>

Moreover, the fact that the percentage of water utilities with revenue decoupling mechanisms was lower than the percentage of distribution utilities (including electric and gas utilities) with such mechanisms made no difference. As Ms. Bulkley explained, there is no meaningful difference between distribution utilities with respect to whether they benefit from revenue decoupling.<sup>143</sup> Notably, several public utility commissions have found that revenue decoupling mechanisms do not require any downward ROE adjustment.<sup>144</sup>

Similarly, after reviewing the substantial environmental risk and uncertainty PAWC faces and the magnitude of environmental compliance costs, Ms. Bulkley concluded that those

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<sup>139</sup> PAWC St. 13, pp. 52-53.

<sup>140</sup> PAWC St. 13, pp. 51-52. PAWC St. 13-RJ, p. 13.

<sup>141</sup> PAWC St. 13, pp. 52-53.

<sup>142</sup> PAWC St. 13-R, p. 78-81. I&E witness Patel contends that PAWC will have the same risk as other companies in its proxy group and is therefore accounted for when setting PAWC's ROW (I&E Main Br., p. 60), but the flaws in his proxy group and DCF calculations discussed in Sections VIII.B and VIII.E mean that PAWC's actual risk is not reflected in I&E's ROE recommendation.

<sup>143</sup> PAWC St. 13-R, p. 77.

<sup>144</sup> *Id.*, pp. 81-82.

risks supported an ROE above her proxy group mean and median.<sup>145</sup> In response to those parties who contended that approval of the ECIC should also reduce the ROE, Ms. Bulkley noted that the Company is facing environmental compliance costs from PFAS alone in the range of \$200 million through 2027.<sup>146</sup> As with the RDM, she determined that approximately 79% of the utility operating companies in the proxy group have some form of capital recovery mechanism, the ECIC was similar to those mechanisms, and approval would therefore move PAWC towards the proxy group median.<sup>147</sup>

**Flotation Costs.** I&E asserts that Ms. Bulkley improperly attributed risk to flotation costs associated with the sale of new issues of common stock as these costs are purportedly recovered as an O&M expense or amortized over time on the books of the issuing company, while Mr. Garrett argues that PAWC either did not have such costs, or they were already accounted for by investors.<sup>148</sup> However, as Ms. Bulkley explained, flotation costs are part of the invested costs of the utility, which are properly reflected on the balance sheet under “paid in capital” and are not current expenses, and, therefore, are not reflected on the income statement.<sup>149</sup> In fact, the great majority of a utility’s flotation costs are incurred prior to the test year but remain part of the cost structure that exists during the test year, and failure to allow recovery of past flotation costs constrains the opportunity to earn the required rate of return in the future.<sup>150</sup> Furthermore, Mr. Garrett’s assertion that investors already accounted for flotation costs is inconsistent with both the calculations Ms. Bulkley provided and the literature

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<sup>145</sup> PAWC St. 13, p. 57.

<sup>146</sup> PAWC St. 13-RJ, p. 15; PAWC St. 3, pp. 5-9.

<sup>147</sup> PAWC St. 13-RJ, p. 15.

<sup>148</sup> I&E Main Br., pp. 59-60; OCA Main Br., p. 52.

<sup>149</sup> PAWC St. 13, p. 46.

<sup>150</sup> PAWC St. 13-R, pp. 70-71.



supporting consideration of flotation costs as a cost of capital and therefore are an appropriate consideration in determining PAWC's required ROE.<sup>151</sup>

## 2. Management Performance

Under Section 523 of the Code, the Commission considers management of performance of a utility and, where appropriate, may include an upward ROE adjustment for management effectiveness.<sup>152</sup> As a threshold matter, the OCA contends that any management performance enhancement is inconsistent with *Bluefield, Hope*, and the principle that rates must be within a zone of reasonableness – in other words, the Commission is essentially foreclosed from awarding *any* ROE adjustment.<sup>153</sup> That is clearly not the case. The flaw in the OCA's argument is its presumption that whatever ROE is set by the Commission is the absolute highest ROE attainable, and it is not. As PAWC witness Bulkley explained, ROE models (including those of OCA's own witness) produce a range of results, and Ms. Bulkley's recommended ROE is well within that range.<sup>154</sup> Similarly, the OCA's claim that the Company's proposed 25-basis point adjustment, if the Commission assigns an ROE of less than 10.70%, is "arbitrary,"<sup>155</sup> is incorrect. The Commission awarded the same amount in *Aqua 2022* in recognition of that utility's willingness to "answer the call" and provide emergency assistance to various water and wastewater systems that needed substantial improvement, concluding that "it would be inequitable to proceed otherwise" as "there is no provision in the Code that demands utilities exhaust employees or financial resources because of emergencies occasioned by others."<sup>156</sup> Notably, the Commission's

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<sup>151</sup> *Id.*; see also PAWC St. 13, pp. 45-47.

<sup>152</sup> See, e.g., *Aqua 2022*, pp. 167-68.

<sup>153</sup> OCA Main Br., pp. 57.

<sup>154</sup> PAWC St. 13-R, pp. 6 & 84.

<sup>155</sup> OCA Main Br., p. 58.

<sup>156</sup> *Aqua 2022*, pp. 172-73.

Policy Statement on small nonviable water and wastewater systems explicitly endorses rate of return premiums to foster acquisitions of such systems.<sup>157</sup>

As in *Aqua 2022*, the evidence in this proceeding demonstrated PAWC's industry leadership in helping resolve the significant challenges faced by troubled water and wastewater systems. In the last ten years alone, the Company has completed sixteen acquisitions of very small, less-viable water and wastewater systems – systems with less than 1,000 customer connections each. The Company has also completed the acquisitions of systems that were not, at the time of acquisition, providing adequate, efficient, safe and reasonable service, including Delaware Sewer Company and Winola Water Company (where the Company also acted as receiver prior to acquisition). None of these acquisitions were under Section 1329, though some were eligible.<sup>158</sup>

Most recently, as previously noted, PAWC agreed to act as receiver for the EDWA, after its water treatment plant ceased producing water and all customers were without even non-potable water for several days for basic sanitary and hygienic purposes, including bathing, dishwashing, and toilet flushing. When PADEP reached out to PAWC, the Company and PADEP jointly applied on an emergency basis for Commission approval for PAWC to be appointed receiver of a municipal authority), which the Commission provided,<sup>159</sup> and PAWC has now been appointed receiver.<sup>160</sup>

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<sup>157</sup> 52 Pa. Code § 69.711.

<sup>158</sup> PAWC St. 1, pp. 42-43.

<sup>159</sup> *Id.*, pp. 43-45; see also *Joint Petition of Pa.-American Water Co. and the Pa. Dept. of Env't Prot. Requesting an Ex Parte Emergency Order in Regard to Receivership of East Dunkard Water Auth.*, Docket No. P-2023-3043950 (Order entered Nov. 1, 2023).

<sup>160</sup> See *Commonwealth of Pa. v. E. Dunkard Water Auth.*, 557 MD 2022 (Pa. Commw. Ct. Feb. 8, 2024). A summary of PAWC's actions as receiver in this role will be filed on Monday, April 8, 2024 at Docket No. P-2023-3043950.

PAWC also routinely extends service to customers without public water and/or wastewater service even in extraordinary circumstances of need. For example, in 2021, the Office of then Attorney General Josh Shapiro reached out to PAWC to ask if the Company would assist in helping to find a drinking water solution for a community of approximately 21 Dimock properties that have not had access to safe well water due to unsafe levels of methane and other contaminants for approximately 15 years.<sup>161</sup>

In recognition of the severe water quality problems facing this community, the Company voluntarily worked to develop a plan for the most effective public drinking water system for Dimock residents, and in November 2022, the Company and the Office of Attorney General presented the proposed system design to Dimock residents who expressed strong support for the project. Subsequently, the Office of Attorney General entered into a Plea Agreement with a third party under which PAWC's construction of this project is fully funded, and thus provides the benefit of public water to these residents without a cost to other PAWC customers.<sup>162</sup> The Company's Application related to the new Dimock system was filed at the Commission on October 13, 2023, and approved on January 18, 2024.<sup>163</sup>

Notably, PAWC has made substantial investments in other systems that it acquired in recent years, including:

- Investing in numerous improvements in the Steelton and Turbotville water systems to help ensure that the plants produce high quality drinking water, including deployment of state-of-the-art SCADA systems and water quality analyzers, replacing filters, and transitioning away from the use of toxic gases in the treatment process.
- Reducing the number of sewage overflows per year from 30 to 1 in the wastewater

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<sup>161</sup> PAWC St. 1, pp. 45-46.

<sup>162</sup> *Id.*

<sup>163</sup> *Application of Pa.-American Water Co. (PAWC) for approval of: (1) the right to offer, render, furnish and supply water service to the public in a portion of Dimock Twp., Susquehanna Cnty.; (2) as necessary, an Offsite Dev. Marketing Agreement by and between PAWC and the Off. of the Attorney Gen.; and (3) as necessary, limited waivers of PAWC's Tariff Water-PA P.U.C. No. 5, Docket No. A-2023-3043501 (Order entered Jan. 18, 2024).*

system acquired from the Clarion Area Authority.

- Committing to a 25-year program, ordered by the PADEP prior to the Company's acquisition of the Scranton combined sewer system, to control and significantly reduce the amount of untreated sewage discharged into the Lackawanna River and its tributaries.
- Developing a solution after taking over the McKeesport wastewater system to address sewage that had been illegally discharged into an old underground mine shaft for years.
- Remedial actions to address nearly 50 violations cited by the PADEP for the Exeter Township wastewater system at the time of the acquisition. Since PAWC acquired these systems, it has invested approximately \$20 million in capital improvements to the collection system and wastewater treatment plant.<sup>164</sup>

Furthermore, contrary to the contentions of both the OCA and I&E, many of the actions and investments that PAWC undertakes go well beyond what is required by the Code and federal and state regulations, including the Company's environmental accomplishments, which are reflected in PAWC's national recognition for performance above and beyond regulatory standards.<sup>165</sup> As PAWC witness Everette testified, PAWC's performance is exemplary in a large number of areas, including water quality, safety, low-income programs, investment in Pennsylvania, and community support.<sup>166</sup> And while I&E excerpts a portion of the Company's recent management audit to suggest that PAWC did not meet expectations, Ms. Everette noted in her testimony that none of the 12 areas highlighted by I&E were marked for significant or major improvement, eight were simply marked for "minor improvement necessary," and the Company had already filed an implementation plan in which it accepted the majority of the Commission's recommendations and partially accepted the remainder.<sup>167</sup> Similar allegations regarding the

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<sup>164</sup> PAWC St. 15-R, p. 11; PAWC St. 3-R, p. 10. In his rebuttal testimony, PAWC Bruce Aiton witness described a wide range of investments that PAWC has made in the systems it has recently acquired. *See* PAWC St. 3-R, pp. 5-13.

<sup>165</sup> PAWC St. 1, p. 37.

<sup>166</sup> *Id.*, pp. 39-41.

<sup>167</sup> PAWC St. 1-R, pp. 14-15.

Company's call center performance, complaint handling, arrearages and other service issues were fully addressed.<sup>168</sup>

In light of the Company's voluntary actions to address the challenges of small and non-viable water and wastewater systems, its track record of investment and improvement in the systems it has acquired, and its consistently superior performance across a range of service to its customers and the communities in which it operates, the Commission should include an upward adjustment under Section 523 in its ROE determination.

## **IX. RATE STRUCTURE AND RATE DESIGN**

PAWC's rate design proposals were described fully in its Main Brief (pp. 54-69). Additionally, the Company discussed the opposing parties' recommendations and explained its position on each. Accordingly, extensive additional discussion of these issues is not necessary. In Sections IX.A. to IX.D. below, PAWC identifies the issues that remain in dispute and addresses any new averments by the opposing parties, to the extent they are relevant.

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

In its Main Brief (pp. 54-60), PAWC provided an overview of the cost of service evidence presented during the course of this proceeding. As noted therein, PAWC's cost of service studies ("COSSs") for its wastewater operations have not been contested. The OCA and OSBA challenge the maximum day and maximum hour factors employed by Company witness

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<sup>168</sup> PAWC Main Br., pp. 91-97; *see also* PAWC St. 9-R, pp. 2-10; PAWC St. 14-R, pp. 25-28. In its Proposed Findings of Fact, the OCA reproduces call handling data relied on by its witness Ms. Alexander in alleging that PAWC's customer service performance is "poor." *See* OCA Main Br., App. D., ¶¶ 229-43, 593-601. PAWC witness Deborah Degillio rebutted Ms. Alexander's claims and explained why her evaluation of the Company's customer service performance based largely on call wait times is erroneous. PAWC St. 9-R, pp. 2-8; *see also* PAWC St. 9, pp. 7-13. The OCA also highlights various collections and arrearage statistics and points to a 2018 Management Audit that included receivables and collections recommendations. *See* OCA Main Br., App. D, ¶¶ 253-266. But the OCA fails to acknowledge that PAWC's most recent Management Audit (2023) did not recommend any changes to the Company's arrearage management or collections processes. Further, as explained by PAWC witness Tawana Dean, PAWC is in the process of launching its AMP, which will provide an additional tool for customers to manage arrearages and receive arrearage forgiveness. *See* PAWC St. 14-R, pp. 25-26.

Constance E. Heppenstall of Gannett Fleming in the COSS for PAWC's water operations ("Water COSS"), asserting that they are out of date.<sup>169</sup> For its part, PAWLUG criticizes the demand study statistics used in the Water COSS because the study was conducted from 2013-2015 and residential consumption has declined since that time.<sup>170</sup>

These issues were addressed at length in PAWC's Main Brief (pp. 54-58). As explained there, the alternative system-wide maximum day factor proposed by both the OCA and OSBA is flawed because PAWC must be prepared to meet customers' peak demands whenever they occur because the system cannot be expanded (or contracted) to meet only those demands that appear within a limited 12-year look-back period they arbitrarily selected. OCA witness Jerome D. Mierzwa and OSBA witness Higgins also have no offered any valid reason to reject the maximum hour demand factor used in the Water COSS based on a detailed analysis of PAWC's actual maximum hour send out. Finally, PAWLUG witness LaConte fails to recognize that consumption patterns are reflected in the COSS because class usage factors are based on annual billed usage.

I&E's and the OCA's Main Brief also rehash the position of their witnesses that PAWC should prepare a separate COSS in its next base rate filing for systems acquired pursuant to Section 1329.<sup>171</sup> However, as explained in PAWC's Main Brief (p. 59), the PUC should continue its approach of moving toward single tariff pricing for all of PAWC systems, including those acquired under Section 1329, and evaluate the necessity of separate COSSs as part of future acquisition proceedings.

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<sup>169</sup> See OCA Main Br., pp. 61-65; OSBA Main Br., pp. 14-17.

<sup>170</sup> See PAWLUG Main Br., pp. 14-15.

<sup>171</sup> See I&E Main Br., pp. 68-69; OCA Main Br., p. 67.

## **B. Revenue Allocation and Act 11**

PAWC's proposed revenue allocation is described in the Company's Main Brief (pp. 60-61) and set forth in PAWC Exhibits 10-A Revised, 10-B, 10-C, 10-D and 10-E Revised and is generally based on the Company's COSSs. The OCA and the OSBA recommend alternative revenue allocations for water service based on their respective COSSs.<sup>172</sup> The OCA's and OSBA's recommendations should be rejected for the reasons set forth above in Section IX.A.

PAWC has proposed to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company's wastewater revenue requirement from its water customer base. As explained in PAWC's Main Brief (pp. 60-61), allocating \$69.5 million of the wastewater revenue requirement (excluding Brentwood), pursuant to Section 1311(c) ("Act 11"), is in the public interest. Parties took varying positions with respect to the amount of wastewater revenue requirement that the Commission should permit PAWC to allocate to water customers and the methodology for allocating the wastewater revenue requirement to water customer classes.

According to I&E, the Commission should not permit the Company to allocate any of its wastewater revenue requirement to water customers. As discussed in PAWC's Main Brief (p. 64) and below in Section IX.C.3., Mr. Kubas's recommended wastewater rates will result in rates for SSS customers that Mr. Rea believes are unaffordable.<sup>173</sup> The PUC should therefore deny Mr. Kubas's proposed rates and his associated recommendation to disallow the Company's proposal to allocate a portion of its wastewater revenue requirement to water customers.<sup>174</sup>

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<sup>172</sup> OCA Main Br., p. 71; OSBA Main Br., p. 19

<sup>173</sup> See PAWC St. 10-R, pp. 58-60.

<sup>174</sup> The OCA also disagrees with I&E's position that no allocation should be permitted. OCA Main Br., p. 73.

Other parties acknowledge that the Commission should permit the Company to allocate some portion of its wastewater revenue requirement to water customers, but not the amount sought by the Company. The OCA asserts that the Company's proposed allocation should be reduced given the Commission's determination in *Aqua 2022* to limit Aqua's proposed allocation.<sup>175</sup> PAWLUG also recommended the Commission "moderate" the impact of the proposed Act 11 allocation.<sup>176</sup> OSBA and CCS only comment on the method of determining the allocation, not the amount of the allocation.<sup>177</sup>

When determining the level of Act 11 allocation that is in the public interest, the Commission must consider how the proposed allocation will impact *all* customers.<sup>178</sup> The Company's proposal will result in substantial benefits to wastewater customers and have a minimal impact on water customers. The Company's proposed allocation will (i) make meaningful progress in moving the rates of its separate wastewater rate zones closer to a single consolidated wastewater rate design for all of the Company's wastewater operations;<sup>179</sup> (ii) maximize the number of customers for whom services will fall below the desired 2% bill-to-income ratio;<sup>180</sup> and (iii) increase the monthly water bill of a residential water customer by only approximately \$6 per month at proposed rates, while decreasing the monthly wastewater bill of a residential wastewater customer by approximately \$10 to \$90 per month at proposed rates, depending on the rate and location of the customer.<sup>181</sup> Denial of the Company's proposal could

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<sup>175</sup> *Id.*, pp. 72-74.

<sup>176</sup> PAWLUG Main Br., p. 23.

<sup>177</sup> See OSBA Main Br., pp. 19-21; CCS Main Br., pp. 3-4. CAUSE-PA states that it did not take a position with respect to Act 11 in the proceeding and recommends that the Company's proposal be rejected based on arguments raised by others. CAUSE-PA Main Br., pp. 23-24. CAUSE-PA's recommendation should be rejected for the reasons set forth in this Reply Brief.

<sup>178</sup> See PAWC 2020, p. 82.

<sup>179</sup> PAWC St. 1, pp. 19-20.

<sup>180</sup> PAWC St. 10, p. 50.

<sup>181</sup> PAWC St. 1, pp. 20-21; PAWC St. 10; pp. 51-52.



result in significant rate increases in several wastewater zones, eroding wastewater affordability posing potential for rate shock to the Company's wastewater customers.<sup>182</sup>

The Company proposes allocating the Act 11 wastewater revenue requirement directly to water customer classes based on wastewater class contributions to the revenue requirement deficiency and, where such contributions are not class specific, allocating to water customers based on relative levels of water cost of service.<sup>183</sup> The Company's methodology is supported by OSBA.<sup>184</sup> PAWLUG proposes modifying the Company's allocation to SSS customers to assign costs based on wastewater cost of service.<sup>185</sup> The OCA and CCS oppose the Company's proposal, arguing that the allocation to water classes should be based on water cost of service.<sup>186</sup> The Company believes that its proposal is reasonable since, as Mr. Rea explains, there is not a complete match between wastewater and water customer classes.<sup>187</sup> The Commission should, therefore, reject the allocation proposals of the OCA, CCS, and PAWLUG.

## **C. Tariff Structure**

### **1. Residential Customer Charge**

I&E agreed with PAWC's water residential customer charge and proposed a slight increase to the Company's SSS residential charge.<sup>188</sup> The OCA argues that the Company's residential water and most wastewater charges should remain at their current rates, and that customer charges in Rate Zones 3, 4, 7, and 9 should be reduced.<sup>189</sup> The Company's proposed customer charges for residential water customers are fully supported by Ms. Heppenstall's direct

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<sup>182</sup> PAWC St. 10, pp. 48-50.

<sup>183</sup> See PAWC Exs. 10-B through 10-E.

<sup>184</sup> See OSBA Main Br., pp. 20-21

<sup>185</sup> PAWLUG Main Br., p. 24.

<sup>186</sup> See OCA Main Br., pp. 74-75; CCS Main Br., pp. 3-4.

<sup>187</sup> PAWC St. 10-R, pp. 34, 36.

<sup>188</sup> I&E Main Br., pp. 74-76. I&E also proposed a matching percentage increase for the SSS commercial customer charge.

<sup>189</sup> OCA Main Br., pp. 77-78.

cost analysis. The Commission should reject the OCA's argument that the Company's cost analysis improperly includes office building and furniture expenses.<sup>190</sup> The OCA sought to exclude similar costs from consideration of the customer charge in Aqua's most recent rate case. The Commission rejected the OCA's claims, finding that the customer-related costs, which Aqua described as necessary for the support of customer facilities and customer accounting, are includable and that OCA's proposed limitation was "unreasonably narrow."<sup>191</sup> The Commission should reach the same conclusion here. The Commission should also find that the Company's wastewater cost analysis properly reflects a portion of infiltration and inflow costs.

## **2. Water Rate Design**

I&E and the OCA propose alternative rates for Rate Zone 2, claiming the Company's proposed increase would result in an unreasonable increase.<sup>192</sup> The Company believes that its proposed increases are reasonable given the relative level of rates currently in place, and PAWC continues to support the full integration of Rate Zone 2 into the Company's Rate Zone 1 single-tariff rate.

CCS and PAWLUG assert that the Industrial customer charge should be increased and proposed a small percentage increase in volumetric charges. As the Company explained in its Main Brief (p. 63), those proposals would result in increased meter charges with no cost-basis and should therefore be rejected.<sup>193</sup>

## **3. Wastewater Rate Design**

As discussed in the Company's Main Brief (pp. 64, 67-68), I&E and OCA proposed modifications to the Company's proposed SSS and CSS wastewater rate design. The changes,

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<sup>190</sup> *Id.*, p. 77.

<sup>191</sup> *Aqua 2022*, pp. 268-69.

<sup>192</sup> I&E Main Br., pp. 77-79; OCA Main Br., pp. 79-80.

<sup>193</sup> As discussed further below in Section X.A., the Company also notes that the rationale provided by CCS and PAWLUG in support of a higher Industrial customer charge also supports approval of the RDM.

among other things, reflect the proposed removal of the Acquisitions and I&E's desire to completely eliminate the Company's proposed Act 11 allocation to water customers.<sup>194</sup> The proposed changes should be rejected for the reasons set forth in Section IX.C.3. of PAWC's Main Brief.

I&E also argues that rates for seven bulk wastewater customers that are served by the York system (the "York Bulk Customers") should be increased by 50% based on the assertion that "the Company's argument that these customers have competitive alternatives [is] speculative at best."<sup>195</sup> The ALJs should summarily reject this argument because it contradicts the testimony of I&E's own witness, who admitted at the hearing that the York Bulk Customers have competitive alternatives.<sup>196</sup>

If the ALJs consider this argument on the merits, they should reject it. For the third time in four years, PAWC has presented extensive evidence demonstrating that the York Bulk Customers have competitive alternatives to wastewater service from PAWC. Once again, PAWC has carried its burden of establishing a *prima facie* case that the York Bulk Customers have competitive alternatives. The burden of production therefore shifted to I&E to produce evidence at least equal in weight to PAWC's evidence.<sup>197</sup> I&E, however, introduced no evidence whatsoever to demonstrate that the York Bulk Customers lack competitive alternatives. I&E simply asserts that the evidence PAWC submitted is insufficient.<sup>198</sup> I&E therefore failed to rebut PAWC's *prima facie* case.

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<sup>194</sup> See I&E Main Br., pp. 80, 82; OCA Main Br., p. 80.

<sup>195</sup> I&E Main Br., p. 81.

<sup>196</sup> Tr. 2156.

<sup>197</sup> *Burleson v. Pa. P.U.C.*, 443 A.2d 1373 (Pa. Commw. Ct. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

<sup>198</sup> I&E Main Br., p. 82.

PAWC introduced extensive evidence establishing that the York Bulk Customers had competitive alternatives when PAWC acquired the York system in Docket Nos. A-2021-3024681 et al.<sup>199</sup> In PAWC's 2022 base rate case, Docket Nos. R-2022-3031672, *et al.*, PAWC introduced extensive evidence establishing that the York Bulk Customers still had competitive alternatives to receiving wastewater service from PAWC.<sup>200</sup> In the instant proceeding, PAWC introduced evidence establishing that the York Bulk Customers continue to have competitive alternatives to receiving service from PAWC. This evidence includes affidavits from the York Bulk Customers that specifically identify some of the competitive alternatives that are still available to them:

Prior to PAWC's acquisition of the York System, the Municipalities' alternatives always included entering into intermunicipal flow agreements to transmit wastewater flow between themselves and to other surrounding municipalities with existing treatment plants based on their contiguous geographic locations. To that end, subject to design and permitting, the Municipalities' alternatives still include (among others):

- Treatment for Manchester Township's wastewater flow by the Dover Township wastewater treatment plant;
- Treatment for York Township's wastewater flow by the Springettsbury wastewater treatment plant;
- Treatment for West Manchester Township's wastewater by [the] Dover Township wastewater treatment plant;
- Rerouting nearly 50% of Manchester Township's wastewater treatment flow from the York System to Springettsbury by installing approximately 600 feet of gravity main;
- The construction of a treatment plant to service Bair Station in West Manchester Township and additional capacity to

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<sup>199</sup> PAWC Ex. ECA-1R (**CONFIDENTIAL**), pp. 5-6.

<sup>200</sup> PAWC St. 6-R, pp. 19-22.

reverse flows from the York City wastewater treatment plant;

- Treatment for West Manchester Township’s wastewater by Jackson Township wastewater treatment plant;
- Utilization of land in the possession of Spring Garden Township to construct a wastewater treatment plant; and
- Construction of an interceptor pump station in York Township to redirect nearly 95% of York Township’s flows from the York City wastewater treatment plant to the Springettsbury wastewater treatment plant.<sup>201</sup>

These are very specific alternatives to service from PAWC. Some of these alternatives (such as entering into intermunicipal flow agreements) could be implemented in the near term. I&E gives no reason why the Commission should find that *every* alternative on this lengthy list is unduly speculative.

In addition, as explained in PAWC’s Main Brief (pp. 64-67), the York Bulk Customers contribute approximately 54% of the treatment flows to the system and the proposed rate increases cover the variable costs of bulk treatment service and provide a meaningful contribution to the total fixed costs incurred to furnish wastewater service to retail customers in the Company’s WW SSS General Operations. As a result, the loss of these customers would necessitate a rate increase for retail customers and would have an adverse impact on the operation of the wastewater treatment plant.

In sum, the record evidence in this case establishes that the York Bulk Customers have competitive alternatives. PAWC’s proposal to increase rates modestly for these customers should be approved because the proposed rates – which are consistent with the existing agreements between PAWC and the York Bulk Customers – would be just and reasonable.

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<sup>201</sup> PAWC Ex. ECA-2R, p. 1.

#### 4. Winter Averaging Wastewater Proposal

The Company's Main Brief (p. 68) addresses the arguments raised by I&E, the OCA, and CAUSE-PA regarding the Company's winter averaging proposal. I&E opposes winter averaging since the Company disagrees with Mr. Kubas's recommendation to only approve winter averaging as a temporary program. Mr. Rea explained that implementing winter averaging on a temporary basis would require the Company to implement "shadow billing," which is unnecessary and impractical. To implement shadow billing, the Company would need to develop two sets of billing determinants, two sets of rates, and calculate two different bills for each wastewater customer in order to provide a comparative analysis of bills and revenues with and without winter averaging.<sup>202</sup>

The OCA and CAUSE-PA assert that winter averaging will harm low-income customers.<sup>203</sup> The OCA and CAUSE-PA believe that winter averaging will penalize low-income customers since higher-income customers may benefit from the mechanism more so than lower-income customers.<sup>204</sup> The Company acknowledges that higher-income customers may benefit more from winter averaging than lower-income customers since higher income customers are more likely to have greater seasonal water usage in the summertime for which they would no longer be billed for wastewater service, but this is a fair result supported by cost causation.<sup>205</sup> Even though higher-income customers may benefit more from winter averaging, that does not mean low-income customers cannot or will not benefit from winter averaging. Greater seasonal

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<sup>202</sup> Tr. 2010-11.

<sup>203</sup> OCA Main Br., p. 81; CAUSE-PA Main Br., pp. 25-26.

<sup>204</sup> *Id.*

<sup>205</sup> PAWC St. 10-R, pp. 54-55. The Company also acknowledges the OCA's "snowbird" argument – that customers who are not in their homes during the winter will benefit since their winter usage will be very minimal – but this scenario is likely limited to a small number of customers. As Mr. Rea explained, usage patterns of certain customers may provide advantages under certain rate structures and disadvantages under other rate structures, but that is not a reason to leave a rate structure in place that runs counter to cost causation principles. *Id.*, p. 55.

usage during the summer months is not strictly confined to higher-income households. For example, CAUSE-PA states that families with children coming back from college for summer break would unfairly benefit from winter averaging,<sup>206</sup> but a lower-income household with returning students or greater summer usage for any other reason will receive the same benefit as a higher-income household with greater summer usage.

The OCA also argues winter averaging will not achieve its stated purpose.<sup>207</sup> However, Mr. Rea provided usage modeling that shows that there are statistically significant levels of water consumption in the summertime that are specifically tied to changes in weather. The OCA's assertion that changes in water usage during the summer are not significant enough to justify the adoption of winter averaging are simply not true.<sup>208</sup> For all these reasons, the Commission should reject the objections to winter averaging raised by I&E, the OCA and CAUSE-PA and adopt the Company's proposal.

#### **D. Scale Back of Rates**

If the Commission approves a revenue requirement that is less than that proposed by the Company, PAWC proposes to proportionally reduce the water and wastewater revenue requirements and the proposed amount of reallocation from wastewater to water under Act 11.<sup>209</sup> Victory accepts the Company's scale back proposal.<sup>210</sup> The Company considered alternative proposals made by the other parties and continues to believe that its proposal is just and

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<sup>206</sup> CAUSE-PA Main Br., p. 26.

<sup>207</sup> OCA Main Br., p. 82.

<sup>208</sup> PAWC St. 10-R, p. 54.

<sup>209</sup> PAWC St. 10, pp. 16-17; PAWC St. 10-R, p. 37.

<sup>210</sup> Victory Main Br., p. 8.

reasonable and should be adopted by the Commission.<sup>211</sup> PAWC's proposal will maintain the Company's proposed relative rates for water and wastewater service.<sup>212</sup>

Several of the parties recommend that any scale back should first be applied to any Act 11 reallocation amounts first.<sup>213</sup> The Company disagrees, as this will effectively result in a revenue requirement reduction to water service.<sup>214</sup> Under these proposals, wastewater rates would only be reduced in the event that PAWC's wastewater revenue requirement is reduced by a greater amount than its proposed Act 11 allocation amount.<sup>215</sup> If the Commission approves a scale back, the wastewater revenue requirement should be reduced by the same proportion as the Company's water revenue requirement.<sup>216</sup>

## **X. ALTERNATIVE RATEMAKING REQUESTS**

PAWC is proposing two alternative rate mechanisms in this case that are both expressly authorized by Section 1330(b)(2) – the RDM and ECIC. Contrary to the OCA's erroneous assertion throughout its Main Brief, those mechanisms are not performance-based rates or “incentives.” For the reasons set forth below and in PAWC's Main Brief (pp. 69-76), the RDM and ECIC are consistent with Section 1330's policy goals, the opposing party objections are without merit, and both mechanisms should be approved.

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<sup>211</sup> PAWC St. 10-R, p. 41. The Company, however, does not oppose I&E's recommendation that Rate Zone 2 residential and commercial and Rate Zone 4 commercial rates should not be scaled back as long as they remain lower than Rate Zone 1 usage rates. *Id.*, p. 40.

<sup>212</sup> *Id.*, p. 37.

<sup>213</sup> See I&E Main Br., p. 87; OCA Main Br., p. 82; OSBA Main Br., p. 22; PAWLUG Main Br., p. 4.

<sup>214</sup> PAWC St. 10-R, pp. 40-41.

<sup>215</sup> *Id.*

<sup>216</sup> PAWC St. 10, pp. 45-46; PAWC St. 10-R, p. 37.



## A. Revenue Decoupling Mechanism

Opposition to the RDM converges around the following arguments: (i) PAWC has not demonstrated a need for the RDM;<sup>217</sup> (ii) the RDM disfavors conservation;<sup>218</sup> (iii) the RDM will disadvantage low-income customers;<sup>219</sup> and (iv) the RDM does not satisfy the fourteen factors of the Commission's alternative ratemaking policy statement.<sup>220</sup> CCS, PAWLUG, and Victory also oppose subjecting non-residential customers to the RDM.<sup>221</sup>

The Company has fully supported its proposed RDM. For the reasons set forth in the Company's Main Brief (pp. 69-73), the RDM will address the acute potential for revenue volatility arising from the mismatch between the Company's immense fixed costs and the fact that the vast majority of its revenues are collected through volumetric rates.<sup>222</sup> Parties opposing the RDM<sup>223</sup> wholly ignore, however, that the mechanism is also designed to provide relief to customers in the event that usage increases due to unexpected external events.<sup>224</sup> Customers will also benefit from stabilized bills and avoid potential over-recovery by the Company.<sup>225</sup>

Arguments that the Commission should reject the RDM because the Company has the ability to

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<sup>217</sup> I&E Main Br., pp. 93-95; OCA Main Br., pp. 84-85; CCS Main Br., pp. 7-8.

<sup>218</sup> I&E Main Br., pp. 94, 96-97; PAWLUG Main Br., pp. 28-29; CAUSE-PA Main Br., p. 30.

<sup>219</sup> I&E Main Br. pp. 93, 96; OCA Main Br., pp. 87-88; CAUSE-PA Main Br., pp. 30-32

<sup>220</sup> I&E Main Br., p. 94; OCA Main Br., p. 88

<sup>221</sup> CCS Main Br., pp. 8-9; PAWLUG Main Br., p. 30; Victory Main Br., p. 10. Victory and CCS oppose the inclusion of Industrial customers. PAWLUG opposes the inclusion of Industrial and Municipal customers.

<sup>222</sup> See PAWC St. 10, p. 86. Over 95% of the Company's costs are fixed. These fixed costs relate to the investments the Company has made, and will continue to make, in its water and wastewater systems for the benefit of its customers across the Commonwealth. The continuing need to make sizeable investments for the benefit of customers is not in dispute, as evidenced by the fact that not one party to this rate case has objected to the Company's proposed utility plant-in-service (except as related to the Acquisitions). See Section IV, *supra*. The fact that 81% of the Company's revenues are collected through volumetric rates means that the Company can be acutely impacted by unpredictable and uncontrollable changes in consumption.

<sup>223</sup> In its Main Brief, OSBA included a conclusory statement that OSBA opposes the RDM and the Commission should reject it, without any citations to the record. The OSBA's recommendation should be rejected on that basis alone and the Commission should disregard any arguments by the OSBA in its Reply Brief. Victory, for the most part, adopts the arguments raised by other parties, which should be rejected for the reasons set forth herein and in the Company's Main Brief.

<sup>224</sup> See PAWC St. 10, p. 88.

<sup>225</sup> *Id.*

utilize other ratemaking tools like the use of a FPFTY, allocation pursuant to Act 11, and the DSIC should be rejected. The use of one or all of these mechanisms does not preclude the use of one or more Commission-approved alternative ratemaking mechanisms. Moreover, each of the ratemaking tools referenced by other parties are utilized to address a ratemaking issue other than revenue volatility.<sup>226</sup> The RDM is being proposed expressly for this purpose. The Commission should also reject the OCA's argument that the RDM must be rejected because PAWC is able to meet its basic responsibilities as a public utility pursuant to Section 1501.<sup>227</sup> If that were the litmus test for being able to propose an alternative ratemaking mechanism, then only a failing utility would be able to utilize alternative mechanisms that the Commonwealth and Commission clearly believed could benefit both utilities and customers.

With respect to conservation, parties have taken the position that the RDM must be rejected since it could result in customers who implement efficiency measures saving less under the RDM than they would if the RDM were not in place. Mr. Rea explained plainly that "customers who use less water will have lower bills," and "a customer who takes specific actions to reduce their water consumption will still enjoy the benefits of a lower bill even with implementation of the RDM."<sup>228</sup> The incentive to conserve will still remain and no party has presented evidence that customers would be dissuaded from implementing planned efficiency

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<sup>226</sup> See PAWC Main Br., p. 71. The use of the FPFTY and the DSIC, among other things, reduce regulatory lag, and the DSIC, specifically, is meant to encourage needed investment in between rate cases. Act 11 encourages larger, stable utilities to acquire nonviable wastewater systems and spread the cost of investment over a larger customer base. None of these mechanisms address the issue of revenue volatility.

<sup>227</sup> See OCA Main Br., p. 84.

<sup>228</sup> PAWC St. 10-R, p. 72; see also OCA Main Br., p. 85. In support of its position, the OCA quotes one customer response at a public input hearing to a leading question posed by the OCA. The customer responded that the mechanism would be a disincentive to reducing usage if the customer would not be able to save *anything*. That will clearly not be the result from implementation of the RDM.

investments because marginal savings might be less with the RDM in place.<sup>229</sup> Parties also ignore the very real benefit to customers, noted above, of a credit in the event consumption is greater than anticipated, and the fact that implementation of the RDM will eliminate the throughput incentive associated with the Company's rate structure.<sup>230</sup>

Arguments that low-income customers will be harmed should also be rejected. The parties' arguments are predicated on the unsupported assumption that usage will decrease due to the widespread adoption of water efficient appliances or other efforts to increase efficiency, which are only within reach of higher-income customers. As Mr. Rea explained, however, changes in revenue resulting from consumption arise from all customers, not just higher-income customers.<sup>231</sup> In addition, efficiencies achieved through appliance replacement affect all customers, not just higher income customers.<sup>232</sup> Therefore, low-income customers would not be disadvantaged, and, as Mr. Rea explained, the RDM will be applied to customer bills *after* the BDP discount has been applied, which, in the event there is an RDM charge, will result in a reduced RDM charge compared to the RDM absent the BDP.<sup>233</sup> Low-income customers would also enjoy the benefit of a credit in the event of over-recovery by the Company.

The Commission should also find that the fourteen factors set forth in the Commission's alternative ratemaking policy statement support approval of the RDM.<sup>234</sup> PAWC provided a

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<sup>229</sup> Similarly, the OCA's hypothetical situation of a customer not being able to enjoy savings if *all* other customers reduce usage is not realistic. The OCA has not, and cannot, point to an example of *all* customers intentionally reducing usage. *See* OCA Main Br., pp. 84-85.

<sup>230</sup> PAWC St. 1, p. 25. This is also consistent with the stated objective set forth in Section 1330(a)(2) of ratemaking being "consistent with the efficiency consumption of utility service." 66 Pa. C.S. § 1330(a).

<sup>231</sup> PAWC St. 10-R, p. 74. Mr. Rea explained that higher-income customers may use more water for outdoor seasonal purposes, but that should not impact low-income customers under the RDM.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*, n. 5.

<sup>234</sup> 52 Pa. Code § 69.3302.

detailed response as to how the RDM addresses each of the fourteen factors; many of which are also directly addressed here and in the Company's Main Brief (pp. 69-73).<sup>235</sup>

Finally, arguments that the RDM should be limited to residential customers are fully addressed in the Company's Main Brief (p. 72). It is worth, restating, however, that PAWLUG and CCS base their argument on the premise that non-residential customers' usage is less susceptible to changes in weather. The Company acknowledges this – but the RDM is intended to address all revenue volatility, not just volatility arising from weather.<sup>236</sup> Curiously, PAWLUG and CCS seem to act as if such volatility does not exist in the context of the RDM, but argue in favor of recovering a greater portion of Industrial revenues through a customer charge instead of volumetric rates to achieve greater revenue stability.<sup>237</sup>

#### **B. Environmental Compliance Investment Charge**

PAWC's environmental compliance requirements are continuously evolving, and this is one of the factors that increases the costs of water and wastewater service and drives the need for rate relief. For the reasons set forth in PAWC's Main Brief (pp. 74-75), the record evidence clearly demonstrates that the need for and timing of measures to comply with new or changed government mandates under applicable environmental laws are outside of the Company's control. PAWC's proposed ECIC will provide a reasonable mechanism to support full and timely rate recognition of PAWC's costs to comply with new and updated environmental mandates in a prudent and efficient manner as they emerge. The ECIC will also mitigate customer exposure to less frequent but more significant rate increases in a general base rate case.

While recognizing that environmental compliance to help ensure adequate and safe

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<sup>235</sup> PAWC St. 10, p. 101; PAWC St. 10-R, pp. 70-71; PAWC Ex. CBR-10. .

<sup>236</sup> PAWC St. 10-R, p. 70.

<sup>237</sup> See CCS Main Br., pp. 6-7; PAWLUG Main Br., pp. 26-27.

drinking water is critically important to customers, I&E, the OCA, the OSBA, CAUSE-PA, and PAWLUG recommend denial of the proposed ECIC.<sup>238</sup> Although PAWC anticipated and fully addressed the arguments advanced by those parties in opposition to the ECIC in its Main Brief (pp. 73-76), a few additional comments are in order.

First, several parties claim that the ECIC would unfairly shift risk away from PAWC to customers because environmental compliance is part of the Company's obligation to provide safe and reliable water and wastewater service.<sup>239</sup> However, emerging regulations or re-interpretations of existing regulations often result in new environmental compliance obligations that disrupt PAWC's five-year plan of construction work and require the Company to undertake additional projects on an expedited basis to comply with those changes. In fact, as PAWC witness Aiton testified, the Company estimates that it will have to tackle about \$200 million of work by 2027 to comply with just one set of evolving government mandates concerning per- and polyfluoroalkyl substances ("PFAS").<sup>240</sup> The ECIC will provide PAWC a reasonable opportunity to recover the capital costs and expenses incurred after June 30, 2025 to meet the challenges of providing high-quality water and wastewater service.

Second, while the parties opposing the ECIC agree that a utility should generally be allowed to recover its environmental compliance costs, they assert that a full and fair ratemaking review can only occur in the context of a base rate proceeding.<sup>241</sup> The environmental compliance

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<sup>238</sup> While Victory did not submit testimony in this case, in its Main Brief (p. 11), Victory adopts the arguments advanced by I&E and the OCA against the ECIC.

<sup>239</sup> See I&E Main Br., p. 100; OCA Main Br., pp. 88-91, 93-94; CAUSE-PA Main Br., pp. 37-38; PAWLUG Main Br., p. 30.

<sup>240</sup> See PAWC St. 3, pp. 5-7. In its Main Brief (p. 90), the OCA mischaracterizes Mr. Swiz's response to a question on cross-examination about the history of the proposed federal PFAS regulations as an "admission" that the "pace" of evolving PFAS regulations is "not as quick as Mr. Swiz alludes." See also *id.*, App. D., ¶¶ 397-99. While Mr. Swiz stated that he could not speak to the specifics and timelines of PFAS requirements, Mr. Aiton, PAWC's Vice President of Engineering, described how the rapidly changing PFAS regulations would impact the Company. See PAWC St. 3, pp. 5-7.

<sup>241</sup> See I&E Main Br., p. 100; OCA Main Br., pp. 91, 93-94; OSBA Main Br., pp. 23-24.

plan (“ECP”) process will permit both the Commission and interested parties ample opportunity to review and challenge PAWC’s proposed investments and measures to comply with new environmental mandates *before any costs are incurred*. Rate adjustment mechanisms for infrastructure investments are not new to the utility industry. Utility commissions in 30 states have approved various forms of environmental compliance riders for energy utilities, and PAWC’s affiliate, Indiana-American Water Company, has a reconcilable surcharge that allows for the recovery of environmental compliance costs.<sup>242</sup>

Finally, the OCA and PAWLUG challenge the design of the ECIC because the Company is not proposing an annual percentage cap on revenue like the DSIC.<sup>243</sup> As Mr. Swiz explained, PAWC’s DSIC investments are ongoing and programmatic, with ratable plans.<sup>244</sup> In contrast, ECIC-eligible costs could be similar in magnitude, but greater in scope and potentially over a much shorter period.<sup>245</sup> As such, the application of rate caps for the ECIC presents unique challenges as each annual ECP could be different.<sup>246</sup>

## **XI. LOW-INCOME CUSTOMER ASSISTANCE**

### **A. Summary**

As detailed in the Company’s Main Brief (pp. 76-91), PAWC has proposed to expand the BDP income eligibility threshold to assist a substantial number of additional customers and has proposed BDP discount levels that incorporate the findings of its robust affordability analysis. In addition to proposing a significant expansion of BDP eligibility to include a new income tier with a large number of customers at the outset of this proceeding, the Company is also open to adopting greater BDP discount levels for the existing and proposed BDP income tiers (as

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<sup>242</sup> PAWC St. 8, p. 23.

<sup>243</sup> OCA Main Br., p. 95; PAWLUG Main Br., p. 31.

<sup>244</sup> PAWC St. 9-R, p. 15.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

proposed by CAUSE-PA and OCA) and intends to continue its multi-faceted outreach strategy to help connect customers in need to H2O Program offerings. Many of the critiques and proposals advanced by the OCA and CAUSE-PA either: (1) fail to acknowledge the robust record evidence supporting PAWC's actions and positions;<sup>247</sup> or (2) rely upon a statutory universal service framework that simply does not apply to water and wastewater utilities. The Commission should find that the Company's affordability analysis and proposed low-income customer assistance programs are reasonable and well-supported.

## **B. Affordability Analysis**

The Company's Main Brief included an extensive discussion of the Company's affordability analysis that anticipated and responded to the arguments raised in the Main Briefs of the OCA, CAUSE-PA, and I&E.<sup>248</sup> The Company's Enterprise-Level and Community-Level analyses of its water and wastewater services demonstrate that (1) the affordability of the Company's water and wastewater service from 2012 through the forecast test period indicates that the Company has invested in and managed its water and wastewater systems for the long-term benefit of PAWC's customers; (2) PAWC's water and wastewater service has been, is, and is expected to continue to be affordable for the majority of its residential customers, including under proposed rates; and (3) there are groups of customers for whom affordability of water and wastewater service may be challenging.<sup>249</sup> The Company's Enterprise-Level analysis also demonstrates that the Bill-to-Income ("BTI") ratio for median income level is expected to be

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<sup>247</sup> As noted in the following subsections, there are several instances where the OCA's Main Brief fails to acknowledge *any* Company testimony on particular low-income assistance topics.

<sup>248</sup> See PAWC Main Br., pp. 61, 76-81.

<sup>249</sup> PAWC St. 10, p. 22; *see also* PAWC St. 10, pp. 7 (results of Water Enterprise-Level Analysis), 8-9 (results of Wastewater Enterprise-Level Analysis), 15-17 (results of Water and Wastewater Community-Level Analyses).

1.12% under proposed water rates and 1.37% under proposed wastewater rates – both under the 2% affordability threshold for individual service and 4% to 4.5% aggregate threshold.<sup>250</sup>

The OCA and CAUSE-PA seem to take the position that if the Company's services remain unaffordable for some, they are simply unaffordable. While the Company does not deny that affordability is and will remain an issue for some customers, affordability must be viewed from the perspective of the broader customer base. As Mr. Rea explained, Mr. Colton's own testimony shows that the Company's water service meets the affordability threshold (i.e., 2% of income) for over 95% of customers with incomes above 200% of the Federal Poverty Level ("FPL"), who make up almost 85% of the Company's customer base.<sup>251</sup>

The OCA and CAUSE-PA also seem to review the Company's affordability analysis and BDP in isolation from one another. Instead, the OCA and CAUSE-PA should be looking at the results of the affordability analysis, together with the Company's BDP. As Mr. Rea explained:

The question of affordability is not one of whether that percentage of customers falls below a certain threshold level or whether the BTI ratio at [median household income] falls below a certain threshold level. The question of affordability instead depends on whether a robust sustainable tariff program, like the BDP, is in place to help customers with affordability issues, gives these customers the opportunity for Basic Water Service at a level deemed to be affordable (2% of household income or less, for example), and whose existence improves the overall affordability of service for all customers as measured by an index like the Affordability Index.<sup>252</sup>

As explained in the Company's Main Brief (pp. 81-82) and in the following section of this Reply Brief, the Company proposed an expansion to the BDP in this case and does not oppose the OCA's and CAUSE-PA's proposals to further increase discount levels for existing

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<sup>250</sup> PAWC St. 10, pp. 7-10.

<sup>251</sup> Tr. 2013; *see also* PAWC St. 10, p. 20 (showing the Affordability Index by Income level for the Company's water and wastewater services).

<sup>252</sup> PAWC St. 10-R, p. 9.



income tiers.<sup>253</sup> To put it in another way, the Company proposed a significant change to its assistance program to increase affordability among a higher income level of customers and does not oppose OCA's and CAUSE-PA's proposed additional remedy to what they viewed as the unaffordability of the Company's services.<sup>254</sup>

In addition, while the Company did respond to the OCA's, CAUSE-PA's, and I&E's critiques of its affordability analysis in its Main Brief, the Company notes that contrary to OCA's claim that PAWC did not credibly respond to comments raised by Mr. Colton, Mr. Rea provided extensive testimony supporting the Company's affordability analysis and responding to the testimony of Mr. Colton (as well as CAUSE-PA witness Harry S. Geller and I&E witness Kubas).<sup>255</sup>

The Commission should therefore find that the Company's affordability analysis is reasonable.

### **C. H2O Bill Discount Program Design**

As described in greater detail in the Company's Main Brief (pp. 81-82), the Company proposed to add a fourth tier of eligibility to its BDP and does not oppose the OCA's and CAUSE-PA's recommendations to increase the discount levels for the existing and proposed income tiers.<sup>256</sup> The only aspect of the Company's BDP program design that remains in contention is CAUSE-PA's recommendation to transition the BDP to a Percentage of Income Payment ("PIP") structure.<sup>257</sup> Specifically, CAUSE-PA recommends that the Commission require PAWC to file a petition within six months of issuance of a final order in this proceeding

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<sup>253</sup> *Id.*, p. 31; *see also* OCA Main Br., p. 97; CAUSE-PA Main Br., p. 50.

<sup>254</sup> The Company does not agree with the OCA's and CAUSE-PA's conclusions regarding its affordability analysis, but nevertheless agreed that increasing discount levels would provide greater levels of affordability for customers at the lowest end of the income scale.

<sup>255</sup> *See* PAWC St. 10, pp. 4-28; PAWC St. 10-R, pp. 3-28; Tr. 2011-15; PAWC Exs. CBR-1 and CBR-2.

<sup>256</sup> PAWC St. 10-R, p. 31. *See also* OCA Main Br., p. 97; CAUSE-PA Main Br., p. 50.

<sup>257</sup> CAUSE-PA Main Br., p. 50.

to pursue implementation of a PIP structure for the BDP that is designed to achieve a combined water/wastewater burden that does not exceed 4% of participants' household income.<sup>258</sup>

The Commission should reject CAUSE-PA's recommendation for the reasons set forth in the Company's Main Brief (p. 82). CAUSE-PA asserts, without support, that its proposed six-month window for PAWC to develop a PIP proposal is sufficient time to for PAWC to "ameliorate system limitation to PIP implementation."<sup>259</sup> In reaching this conclusion, CAUSE-PA simply ignores Ms. Dean's testimony that PAWC's system is not configured to allow for a PIP structure.<sup>260</sup> Furthermore, the Company's affordability analysis demonstrates that virtually every residential customer has the opportunity to obtain basic water for both water and wastewater services at affordable levels (i.e., less than 2% of household income for one form of service and 4% to 4.5% of household income for both).<sup>261</sup>

#### **D. Hardship Fund**

In their Main Briefs, OCA (pp. 98-99) and CAUSE-PA (pp. 51-57) continue to recommend certain operational and funding changes to the Hardship Grant component of PAWC's H2O Program.<sup>262</sup> OCA recommends raising the customer income threshold from 200% to 250% of FPL and allowing for multiple grant distributions to a customer in a year (subject to annual grant maximums).<sup>263</sup> CAUSE-PA recommends (i) elimination of the good-faith payment requirement, (ii) permitting customers to apply for more than one grant per program year, up to applicable maximum annual grant amounts, (iii) increasing the annual grant amount to \$600 for

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<sup>258</sup> *Id.*

<sup>259</sup> CAUSE-PA Main Br., p. 51.

<sup>260</sup> *See* Tr. 2019-20.

<sup>261</sup> PAWC St. 10-R, p. 9.

<sup>262</sup> CEO did not submit a Main Brief but made recommendations concerning Hardship Grants in testimony. PAWC addressed those recommendations in its Main Brief (pp. 83-85).

<sup>263</sup> OCA Main Br., pp. 98-99.

water and wastewater, respectively, and (iv) increasing annual funding by \$1 million.<sup>264</sup> I&E recommends that, if the funding increase is approved, the PUC should specify that the funding would come from shareholders.<sup>265</sup>

While PAWC has already fully responded to these recommendations in its Main Brief (pp. 83-85), it appears that additional clarity is required concerning the issuance of multiple customer grants in a single year. PAWC agreed, as part of the Settlement of its 2022 base rate proceeding, to develop a solution whereby a customer could receive multiple hardship grants in a year subject to annual grant maximums.<sup>266</sup> In its Main Brief (p. 99), OCA states “[d]espite this condition to the settlement, a solution has not been achieved.” The OCA completely ignores the testimony of PAWC witness Dean on this issue.<sup>267</sup> In her rebuttal testimony, Ms. Dean explained that the Hardship Fund administrator, Dollar Energy Fund (“DEF”), is developing a software enhancement that is expected to deploy at the start of the 2024-2025 program year. Once the enhancement is effective, customers will be able to apply for multiple Hardship Grants during a program year.<sup>268</sup> In light of this un rebutted evidence, OCA’s suggestion that PAWC is acting inconsistently with the 2022 proceeding settlement should be rejected.

#### **E. Conservation Assistance**

In its Main Brief (pp. 58-63), CAUSE-PA continues to recommend that PAWC develop and implement a comprehensive conservation and line repair/replacement program for all customers below 200% of FPL that would include targeting of high-usage customers, annual

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<sup>264</sup> CAUSE-PA Main Br., pp. 51-57.

<sup>265</sup> I&E Main Br., pp. 102-03.

<sup>266</sup> See *Pa. P.U.C. v. Pa.-American Water Co.*, Docket No. R-2022-3031672 and R-2022-3031673. The Order approving the Settlement was entered on December 8, 2022.

<sup>267</sup> In fact, the OCA’s Main Brief does not even acknowledge that any Company testimony was provided on any Hardship Fund issue.

<sup>268</sup> See PAWC St. 14-R, p. 16.

reporting and coordination with other utility programs.<sup>269</sup> I&E stated that the costs of such a program, if approved, should be borne by shareholders and not customers.<sup>270</sup>

For the reasons described in its Main Brief (pp. 83-85), PAWC opposes Mr. Geller's recommendation to impose a low-income usage reduction program ("LIURP") construct on PAWC that was established for electric distribution companies ("EDCs") and natural gas distribution companies ("NGDCs"). PAWC also opposes I&E's recommendation that the costs of a conservation assistance program be borne by shareholders, as the PUC does not have the authority to order a utility to contribute shareholder funds for such a program.<sup>271</sup>

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

In PAWC's Main Brief (pp. 86-88), the Company described its diverse array of outreach efforts that have helped to drive a significant increase in BDP participation over the last few years. In their Main Briefs, the OCA (pp. 99-100) and CAUSE-PA (pp. 63-68) continue to propose new processes and requirements related to outreach. Notably, the OCA only cites to its own direct testimony in its Main Brief and fails to acknowledge (or attempt to rebut) any of the Company's testimony on outreach, screening, and intake issues.

While the Company has fully addressed the outreach-related proposals in its Main Brief (pp. 86-88), PAWC would like to additionally respond to CAUSE-PA's assertion that PAWC is lacking clear policies or procedures to ensure that customers are appropriately referred to universal service programs consistent with certain obligations under the Code.<sup>272</sup> Specifically, CAUSE-PA cites utility obligations to: (1) refer a customer to the universal service program

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<sup>269</sup> The OCA also recommends coordination with other utility programs. *See* OCA Main Br., p. 99.

<sup>270</sup> I&E Main Br., pp. 103-104.

<sup>271</sup> *Cf. Nat'l Fuel Gas Distrib. Corps. Universal Serv. & Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 62.4*, Docket No. M-2013-2366232, 2014 WL 2426998, at \*4 (Final Order entered May 22, 2014) ("the Commission does not have authority to specify the amount of shareholder funds utilities must contribute to hardship fund programs").

<sup>272</sup> CAUSE-PA Main Br., pp. 64-65.

administrator when a customer contacts a utility to make a payment arrangement (Section 1410.1); and (2) compute bills under the rate most advantageous to the customer (Section 1303). CAUSE-PA's concerns are unwarranted as this specific issue was addressed by PAWC witness Degillio. She explained that when a customer calls in seeking payment assistance, customer care agents ("CCAs") are trained to direct customers to call the DEF (PAWC's universal service program administrator) to enroll in the Company's H2O Program offerings.<sup>273</sup> Further, once a customer has enrolled in the BDP, that customer's bills are computed in accordance with the applicable discount level.<sup>274</sup>

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

In its Main Brief (pp. 69-71), CAUSE-PA continues to recommend quantitative outreach goals, updates of low-income customer counts, BDP enrollment benchmarks, and information reporting. For the reasons described in PAWC's Main Brief (pp. 88-89), CAUSE-PA's recommendations are either unreasonable and/or unnecessary. In its Main Brief (p. 101), the OCA raised issues that PAWC addressed in a separate customer service section of its Main Brief. Specifically, the OCA repeats Mr. Colton's recommendation for customer satisfaction surveys targeting customers (1) expressing an inability to pay, (2) addressing a pending or completing service termination, or (3) seeking to enroll in a customer assistance program or deferred payment arrangement. The OCA failed to acknowledge the testimony from PAWC witness Degillio that directly addressed customer surveys.<sup>275</sup> Ms. Degillio explained that Mr. Colton's recommendation is unnecessary since PAWC and the Customer Service Organization ("CSO")

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<sup>273</sup> PAWC St. 9-R, p. 11; *see also* PAWC Main Br., p. 87.

<sup>274</sup> As the Company explained in its Main Brief (p. 81), there are three tiers of discounts within the BDP and customers with the lowest incomes receive the highest percentage discounts.

<sup>275</sup> In fact, OCA's Main Brief fails to rebut (or even acknowledge) any PAWC testimony on any low-income data collection, reporting or monitoring issues.

already identify trends from customer feedback provided via transaction surveys, including from customers seeking bill assistance, requesting payment arrangements, raising inability-to-pay issues, or responding to disconnection notices.<sup>276</sup>

#### **H. Comprehensive Written Universal Service Plan**

In their Main Briefs, both CAUSE-PA (pp. 72-75) and the OCA (p. 101) restate their recommendation to require PAWC to develop and file a universal service plan.<sup>277</sup> For the reasons described in PAWC's Main Brief (pp. 89-90), the Commission should not mandate the development and implementation of a universal service plan in the absence of any universal service requirement and corresponding full and timely cost recovery for water and wastewater utilities under Pennsylvania law. Notably, I&E's Main Brief (pp. 104-105) also highlights that only EDCs and NGDCs are currently required to file universal service plans and it would not be appropriate to single out PAWC to provide a universal service plan.

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

In its Main Brief (pp. 75-80), CAUSE-PA continued to question the Company's oversight over DEF activities and recommended auditing metrics and the submission of periodic third-party evaluations of its low-income assistance program in-line with the six-year evaluation conducted for EDC and NGDC universal service programs. As described in PAWC's Main Brief (pp. 90-91), these recommendations should be rejected because the Company already has an appropriate oversight process in place that includes regular meetings with DEF and full access to a range of relevant program implementation data.

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<sup>276</sup> PAWC St. 9-R, p. 10.

<sup>277</sup> OCA's Main Brief simply cites its own testimony and fails to rebut (or even acknowledge) any PAWC testimony on this issue.

## **XII. SERVICE QUALITY AND CUSTOMER SERVICE ISSUES**

### **A. Summary**

The CSO supports the customer service needs of PAWC and the other American Water utility subsidiaries, including customer call handling and billing. As explained in PAWC’s Main Brief (pp. 92-93), PAWC and the CSO leverage multiple sources of customer feedback to monitor the customer experience and maintain high levels of overall satisfaction. Alone among the parties to the case, the OCA contends that PAWC’s customer service is inadequate, and based on that mischaracterization, recommends that the PUC impose several conditions to improve customer service. For the reasons set forth below and in PAWC’s Main Brief (pp. 91-97), those recommendations should be rejected.

As PAWC explained in its Main Brief (p. 95), OCA highlighted individual customer public input hearing testimony about water quality and service issues and had “no issue” with the PAWC response that was detailed on a customer-by-customer basis in PAWC witness Runzer’s rebuttal testimony. In its Main Brief (pp. 16-17), CAUSE-PA takes aim at all individuals who chose to provide positive testimony about the Company during the public input hearings. CAUSE-PA argues that the PUC should “disregard” the testimony of witnesses that PAWC allegedly “coached” through the use of “extensive talking points.” In reality, PAWC’s typical outreach to these individuals was about one page, half of which related to the logistics of testifying at a public input hearing.<sup>278</sup> Importantly, the testifying witnesses themselves described receiving potential speaking topics, not mandatory talking points. Mr. William Dingman, for example, stated “[t]here was nothing in the email that I took as a talking point, as in, would you

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<sup>278</sup> Joint Stipulation of CAUSE-PA and PAWC dated March 7, 2024, Response to CAUSE-PA 04-001. About two pages of information was provided in response to a specific request for information from a State Representative. *See id.*, Response to CAUSE-PA 04-002.

say the following? ... Everything I said was of my own words and my own opinions.”<sup>279</sup>

CAUSE-PA’s recommendation should be rejected because it seriously mischaracterizes both the nature of PAWC’s outreach and the sworn witness testimony directly addressing this issue.

CAUSE-PA further claims to be “deeply concerned” about whether PAWC adequately informed customers about the public input hearings.<sup>280</sup> CAUSE-PA simply has no basis for these concerns. First, customers were noticed about the public input hearings in a manner consistent with the directives from the ALJs. If CAUSE-PA had concerns about the noticing process, it should have raised such concerns at the time noticing was being considered by the ALJs. Second, the record in this case demonstrates that there was substantial customer participation at the eight in-person public input hearings and four telephonic public input hearings. The Commission should therefore reject CAUSE-PA’s suggestion that there was inadequate noticing of the public input hearings.

## **B. Customer Service Performance**

The OCA’s discussion of PAWC’s customer service performance consists of a summary and repetition of the testimony of its witness, Ms. Alexander, who took issue with CSO performance principally because she believes PAWC customers calling the Company are waiting too long to speak to an agent.<sup>281</sup> Based on her opinion about call handling, Ms. Alexander offers several recommendations that she urges the PUC to adopt as a condition to the rate increase granted in this case.<sup>282</sup> Those conditions include performance standards (80% of PAWC customer calls to be answered within 30 seconds and a 4% call abandonment rate), a root cause

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<sup>279</sup> Tr. 1467; *see also* Testimony of Mr. Clarence Hitz, Tr. 1457 (“And there was like five bullet points, I think, that I could have spoke on. And when I looked at them, I said really, this is the only one I feel comfortable with.”)

<sup>280</sup> CAUSE-PA Main Br., p. 17.

<sup>281</sup> *See* OCA Main Br., pp. 102-105.

<sup>282</sup> *Id.*, p. 102; *see also* OCA St. 6, pp. 11-24.



analysis of all customer complaint data, and revisions to PAWC’s agreement with American Water Works Service Company (“Service Company”) to require, among other things, withholding of fees if third-party call handling agencies do not meet the OCA’s proposed performance metrics.<sup>283</sup>

The flaws in Ms. Alexander’s evaluation of PAWC’s customer service performance were identified by Company witnesses Degillio and Dean in their rebuttal testimony and were further explored by PAWC in its Main Brief (pp. 90-97). Unfortunately, the OCA largely ignores and does not rebut those deficiencies in its Main Brief.

As discussed in PAWC’s Main Brief (pp. 93-95), the key error in the OCA’s evaluation of PAWC’s customer service is Ms. Alexander’s exclusive reliance on and misapplication of two call handling metrics presented in the Bureau of Consumer Services annual customer service reports for electric and gas utilities. The OCA ignores all other drivers of overall customer satisfaction, including quality and value of service. The OCA observes that the 2019-2022 data presented in PAWC’s most recent management audit does not meet the “service level” of answering 80% of calls within 30 seconds. What the OCA conveniently neglects to mention is that CSO performance data only reflects calls answered by an agent, while the BCS report allows electric and gas electric utilities to include calls answered by the Interactive Voice Response (“IVR”) in their service level data.

The OCA relies upon the Commission’s decisions in *Pennsylvania Public Utility Commission vs. Pennsylvania Gas and Water Company*, 1986 Pa. PUC LEXIS 113 (Apr. 25, 1986) (“PG&W 1986”) and *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, 2000 Pa. PUC LEXIS 876 (Nov. 22, 2000) (“PGW 2000”).<sup>284</sup> The OCA does not discuss the

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<sup>283</sup> OCA Main Br., pp. 104-105.

<sup>284</sup> OCA Main Br., pp. 6, 105.

facts of those cases at all, but appears to claim that the PUC's holdings support Ms. Alexander's proposed conditions to address alleged service inadequacy. Even a cursory examination of those cases shows otherwise. *PG&W 1986* involved clearly inadequate service where the water provided to customers was black, contained worms, and was unfit to drink.<sup>285</sup> Similarly, in *PGW 2000*, the Commission found that a gas utility on the brink of financial ruin was not providing safe and reasonable service because, among other things, the main replacement rate was only 0.5% or 9 miles per year and its customer billing system was not functioning.<sup>286</sup> Obviously, call wait times that are longer than the OCA's witness in this case would like do not resemble the serious water quality and service problems presented in those cases. To the contrary, as the record in this case confirms, PAWC provides adequate, efficient, safe, and reasonable service in accordance with Section 1501 of the Code.

With respect to PAWC's responsiveness to customer complaints, in its letter in lieu of Main Brief (p. 2), the City of Scranton noted its appreciation of the Company's commitment to proactively provide courtesy credits to any customers assessed late fees in January 2024 due to postal service delays. Thus, the only party that takes issue with the Company's process for responding to complaints is the OCA, and PAWC's Main Brief (p. 96) explains why the root-cause analysis proposed by Ms. Alexander is unwarranted in light of the Company's robust complaint analysis process.

### **C. Tenant Issues and Protections**

In its Main Brief (pp. 80-87), CAUSE-PA continues to claim that new, granular metrics must be tracked and reported on to ensure that PAWC is complying with the Discontinuance of Services to Leased Premises Act ("DSLPA"). As described in PAWC's Main Brief (pp. 97-99),

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<sup>285</sup> See *PG&W 1986*, 1986 Pa. PUC LEXIS 113, at \*11-\*19.

<sup>286</sup> See *PGW 2000*, 2000 Pa. PUC LEXIS 876 at \*34-\*44.

PAWC fully complies with DSLPA, including the 37-day notice process prior to termination.<sup>287</sup> Further, even though the DSLPA obligates the landlord ratepayer to notify the utility about a premise being used for a rental purpose, the Company utilizes information from multiple sources (landlords, tenants and field service representatives) to determine if a property is reasonably likely to be tenant occupied and coded appropriately in PAWC's system.<sup>288</sup> CAUSE-PA's recommended metrics and reporting are unwarranted in light of PAWC's existing processes and procedures.

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

In its Main Brief (pp. 87-91), CAUSE-PA contends that changes to PAWC's policies and procedures regarding termination at the request of a non-Company wastewater provider are necessary to better ensure compliance with the Water Services Act ("WSA"). In addition, the OCA Main Brief (pp. 105-06) recommends changes to PAWC's proposed Tariff Section 12.8 (addressing termination at the request of a non-Company wastewater provider) to: (1) narrow the types of wastewater providers referenced in the rule; and (2) add requirements for certain termination notices. The OCA further claims that its proposed tariff changes would still allow the Company to "uphold its Joint Services Agreement with Aqua."<sup>289</sup>

While PAWC has already fully responded to these recommendations in its Main Brief (pp. 99-101), the Company would like to address the OCA's erroneous claim regarding the Joint Services Agreement with Aqua. The OCA proposes to limit Tariff Section 12.8 to municipal entities covered by the WSA and other non-Company wastewater providers with a "Commission-approved agreement."<sup>290</sup> As PAWC witness Dean explained, however, PAWC's

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<sup>287</sup> PAWC's processes are also consistent with the Utility Services Tenants Rights Act. PAWC Main Br., p. 98.

<sup>288</sup> *Id.*

<sup>289</sup> OCA Main Br., p. 105.

<sup>290</sup> OCA St. 6-SR, pp. 17-18.

Joint Services Agreement with Aqua was not approved by the Commission. After the Agreement was submitted, rather than approving (or disapproving) it, the Commission instead directed the parties to seek approval of tariff changes related to provisions affecting customers – which is exactly what PAWC has done in this case.<sup>291</sup> The OCA is therefore incorrect that its recommendations are compatible with the Joint Services Agreement. For this reason, and all the reasons described in PAWC’s Main Brief (pp. 99-101), the Commission should reject the OCA’s proposed changes to Tariff Section 12.8.

#### **E. American Water Resources**

For over two decades, AWR has offered optional products and services, such as water line and sewer line protection plans, to PAWC customers. AWR’s protection plans are not utility services subject to PUC jurisdiction, and the Commission and PAWC have no authority over AWR’s pricing and marketing practices.<sup>292</sup> In this case, OCA witness Alexander raises several concerns related to PAWC’s relationship with AWR, apparently as a result of American Water’s sale of its ownership interest in AWR in December 2021. PAWC’s Main Brief (pp. 101-107) addressed all of the evidence and arguments that had been developed on the record about the Company’s long-standing arrangement with AWR.

The OCA pursued a different course. The OCA elected to dedicate a single paragraph to this issue in its Main Brief (p. 106) that simply urges the ALJs to review over 20 pages of its own witness’s testimony, as if PAWC had not presented rebuttal testimony.<sup>293</sup> For that reason,

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<sup>291</sup> Tr. 2020-21.

<sup>292</sup> See PAWC Main Br., p. 103 (citing *PPL Elec. Utils. Corp. v. Pa. P.U.C.*, 912 A.2d 386, 408 (Pa. Commw. Ct. 2006) and *Pa. P.U.C. v. Columbia Gas of Pa., Inc.*, Docket No. R-2018-2647577, 2018 WL 6590854, at \*28-\*33 (Pa. P.U.C. Dec. 6, 2018)).

<sup>293</sup> See also *id.*, App. D, ¶¶ 607-33 (repeating verbatim portions of Ms. Alexander’s testimony regarding AWR). The Commission’s regulations (52 Pa. Code § 5.501(a)(3)) prohibit the OCA from “sandbagging” PAWC by staying silent on the scope of the Commission’s jurisdiction over AWR’s products and services and then making its arguments in its Reply Brief to which PAWC could not respond. Should the OCA endeavor to take this approach,

the OCA's Main Brief creates the false impression that Ms. Alexander's concerns had not been rebutted and should be accepted at face value. Nothing is further from the truth. Ms. Alexander's allegations about the Company's relationship with AWR were decisively refuted by Ms. Degillio. For the reasons explained in PAWC's Main Brief (pp. 103-106), none of Ms. Alexander's concerns are valid and therefore the OCA's proposed Commission investigation of PAWC's relationship with AWR that has remained the same for over 20 years is not warranted.

#### **F. Main Extensions**

The Company's position with respect to this issue is set forth in its Main Brief (p. 107). As explained there, PAWC is evaluating whether Rule 27.1(F) of its tariff is an appropriate mechanism to fund the main extension proposed by the OCA and the Jefferson Township Municipal Authority or if alternate grant funding should be pursued instead.

#### **G. Pressure Surveys and Pressure Reducing Valves**

In its Main Brief (pp. 108-109), PAWC explained that a general education campaign regarding pressure reducing valves was not appropriate but did agree to establish a notification process for customers where PAWC's system pressure regularly exceeds 100 psi. The OCA supports PAWC's notification proposal and recommended that "PAWC also provide notice if, for operational reasons, it increases regular operating pressures above 100 psi."<sup>294</sup> PAWC accepts this recommendation and will incorporate it into the proposed notification process.

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any such arguments should be disregarded. *See, e.g., Application of Interstate Energy Co.*, Docket No. A-00140200, 1994 WL 932289, at \*\*5-7 (Initial Decision issued Aug. 11, 1994) (striking portions of reply brief that raised arguments that the party could have – and should have – presented in its Main Brief); *Petition of West Penn Power Co. d/b/a Allegheny Power for Approval of Its Energy Efficiency & Conservation Plan, Approval of Recovery of Its Costs Through A Reconcilable Adjustment Clause & Approval of Matters Relating to the Energy Efficiency & Conservation Plan*, Docket No. M-2009-2093218 (Opinion and Order entered Oct. 23, 2009) (noting that "parties should not be permitted to introduce new arguments at the reply brief stage of a proceeding"), p. 69.

<sup>294</sup> OCA Main Br., p. 107.

### **XIII. MISCELLANEOUS ISSUES**

#### **A. Customer Notices Related to Rate Changes**

In its Main Brief (pp. 108-109), the OCA asserts that PAWC's notices to customers regarding the contents of its proposed rate changes are deficient in that they do not reflect the impact of PAWC's proposed revenue shift under Section 1311(c), a higher residential usage customer level, or the Commission's final disposition of PAWC's proposed alternative ratemaking mechanisms (the RDM and the ECIC). The OCA proposes a new requirement, only applicable to PAWC, that would require notices that include rates that are not consistent with PAWC's proposed tariff as well as a new direct mailing to customers regarding PAWC's approved rates after a Commission decision before those rates go into effect, which would be in addition to the bill insert PAWC already provides.<sup>295</sup>

The OCA's proposed new notice requirements for PAWC should be rejected in their entirety by the Commission. As explained in the Company's Main Brief (p. 110), PAWC fully complies with the Commission's current regulations for customer notice, including usage level, and will also provide the required notice of new rate changes through a bill message just as it has in prior rate cases without the additional significant expense of a direct mailing that will be untimely given the likely effectiveness of new rates.<sup>296</sup> Should the Commission determine that additional notice requirements should apply to water and wastewater utilities, those requirements should be imposed through a rulemaking or other proceeding and not be applied only to PAWC.

#### **B. Tariff Changes**

The only contested tariff changes discussed in non-Company Main Briefs are addressed in Section XI.D. above.

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<sup>295</sup> See also PAWC St. 1-R, p. 25.

<sup>296</sup> PAWC Main Br., pp. 109-110; PAWC St. 1-R, pp. 25-28.

**XIV. CONCLUSION**

For the reasons set forth above and in PAWC’s Main Brief, the Commission’s investigation at Docket Nos. R-2024-3043189 and R-2024-3043190 should be terminated, the various Complaints consolidated therewith should be dismissed, and the Company’s proposed rates should be permitted to become effective without modification.

Respectfully submitted,



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