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E-FILED

April 5, 2024

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

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

Dear Secretary Chiavetta:

Attached please find the Reply Brief of Cleveland-Cliffs Steel for filing in the
above-captioned proceedings.

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

Sincerely,

/s/ Kurt J. Boehm
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**COUNSEL FOR CLEVELAND-
CLIFFS STEEL**

KJBkew

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
vs.	:	Docket No. R-2023-3043189 (Water)
	:	
Pennsylvania American Water Company	:	R-2023-3043190 (Wastewater)

**REPLY BRIEF OF
CLEVELAND-CLIFFS STEEL**

COMES NOW, Cleveland-Cliffs Steel (“Cleveland-Cliffs”) and submits its Reply Brief in these proceedings. For ease of reference, Cleveland-Cliffs’ arguments are organized using the joint issues outlined agreed to by the parties.

IX. RATE STRUCTURE AND RATE DESIGN

A. Cost-of-Service Studies

1. Water Operations

Cleveland-Cliffs’ Recommendation: The Commission Should Apply An Equal Percentage Allocation Of The Water Increase To All Customer Classes.

Cleveland-Cliffs recommends that the Commission apply an equal percentage increase for the Residential, Commercial, Industrial, and Public classes.¹ Please note that in its Main Brief, Pennsylvania American Water Company (“PAWC” or “Company”) states that while it continues to support its own allocation of water costs, it does not oppose Cleveland-Cliffs witness Mr. Baudino’s proposed changes to the PAWC allocation.²

¹ Cleveland-Cliffs Main Brief, pp. 1-2.

² PAWC states: “While the Company believes that its proposed water revenue allocation is reasonable for the reasons explained by Mr. Rea, it does not oppose the higher increases for the Municipal class proposed by Mr. Higgins and Mr. Baudino with offsetting decreases to other customer classes.” PAWC Main Brief pp. 62-63.

IX. RATE STRUCTURE AND RATE DESIGN

B. Revenue Allocation And Act 11

Cleveland-Cliffs' Recommendation: The Direct Assignment Of Wastewater Subsidies From Wastewater Service Classes To The Corresponding Water Service Classes Should Be Rejected By The Commission.

In current rates, the wastewater subsidy is recovered from water customers according to the customer class share of water costs. This is a simple and equitable method of allocating Act 11 costs to water customers. In this case, PAWC and other parties propose a change to the current methodology that would inappropriately link wastewater class subsidies to the water service classes by directly assigning wastewater subsidies to the corresponding water service classes. PAWC's proposed direct assignment allocation of the wastewater subsidy is further complicated by the fact that PAWC's wastewater class categories do not even match those for its water system. In its Main Brief, Cleveland-Cliffs proposed that the Commission reject these proposed changes to the allocation methodology and maintain the current method of allocating Act 11 costs, updated to include the Private Fire class.³

Despite the fact that Cleveland-Cliffs is proposing to maintain the current Commission-approved method of allocating Act 11 costs, the Office of Small Business Advocate ("OSBA") argues in its Main Brief that Cleveland-Cliffs' proposal violates 66 Pa. Code § 1311(c).⁴ OSBA states:

*"The legal problem with the OCA and Cleveland-Cliffs Steel methodology is that it transforms wastewater costs into water costs, and then those "transformed" wastewater costs are allocated based upon PAWC's Water COSS. That "transformation" violates the plain language of the statute. Specifically, Section 1311(c) explicitly uses the word "allocate" – not "transform" or "change.""*⁵

³ Baudino Direct Testimony, pp. 13-14.

⁴ 66 Pa. Code § 1311(c) states in relevant part: "The commission when setting base rates ,... may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest."

⁵ OSBA Main Brief, p. 20.

Cleveland-Cliffs strongly disagrees with OSBA's statutory argument. OSBA claims, without any factual or legal basis, that OCA and Cleveland-Cliffs' allocation proposal is somehow not an "allocation" of costs within the meaning of Section 1311(c), but a "transformation" of costs. And therefore, Cleveland-Cliffs' proposal violates Section 1311(c) because it allows the Commission to "allocate" costs and not "transform" costs.

This is an entirely invented "legal problem." An allocation proposal does not cease to be an allocation proposal simply because an opposing party declares that it is a "transformation." And as stated above, the Commission's *current* allocation of Act 11 subsidies is consistent with Cleveland-Cliff's proposal, *not* OSBA's. So if Cleveland-Cliffs' proposal violates Section 1311(c), then the current Commission-approved allocation of Act 11 costs must also violate Section 1311(c). This is clearly not the case.

Putting OSBA's statutory argument aside, OSBA's proposal to allocate a wastewater subsidy to water customers based on wastewater cost-of-service is simply unreasonable. Water customers, by definition, did not cause the wastewater costs that are being allocated to them. So an allocation based on wastewater COSS cannot be cost-based. The wastewater COSS is simply not capable of allocating costs to water customers. OSBA even admits in the very next paragraph of its Brief, that its own proposed allocation method is problematic because wastewater class categories do not even correspond to the water class categories.⁶ It is far more reasonable to maintain the Commission's current policy of using the water COSS study to allocate costs to water customers when allocating Act 11 costs.

The direct assignment proposals made by PAWC, OSBA and others in this case are mechanically unreasonable in that they use a wastewater cost-of-service study to allocate costs

⁶ "The allocation of any subsidy is, by its nature, imperfect, since it is a departure from cost causation. Unfortunately, the allocation of PAWC's Act 11 subsidy is further complicated by the fact that PAWC's non-residential wastewater class categories do not match those for its water system." OSBA Main Brief, p. 20.

to water customers. Cleveland-Cliffs respectively recommends that the Commission reject these proposed changes and maintain the current method, updated to include Private Fire.

IX. RATE STRUCTURE AND RATE DESIGN

C. Tariff Structure

2. Water Rate Design

Cleveland-Cliffs' Recommendation: The Industrial Tariffs Should Be Designed To Recover More Fixed Costs In Order To Better Reflect Cost-Causation.

PAWC claims in its Main Brief that Cleveland-Cliff's proposal to increase Industrial meter charges by the same percentage as the other rate elements has "no cost-basis."⁷ This argument is contradicted by PAWC's own testimony. PAWC witness Mr. Rea states in Direct Testimony:

*"Approximately 81% of the Company's water and wastewater service revenues will be collected under volumetric rates under the Company's proposed rate structure in this case, which means that revenues will vary up or down depending on how much water our customers use. At the same time, over 95% of the Company's costs are fixed costs, which do not vary depending on how much water our customers use."*⁸

Given Mr. Rea's testimony that the Company recovers 81% of its costs through volumetric rates, despite the fact that 95% of its costs are fixed, it is unclear how PAWC can now argue in its Main Brief that a proposal to increase Industrial fixed meter charges is not cost-based. Based on Mr. Rea's testimony it would be reasonable from a cost-of-service perspective to increase Industrial meter charges and lower volumetric charges by a much larger amount than proposed by Cleveland-Cliffs or PAWLUG.

⁷ PAWC states: "Ms. LaConte's and Mr. Baudino's proposals would result in increased meter charges with no cost-basis." PAWC Main Brief p. 63.

⁸ Direct Testimony of Charles Rea, pp. 86-87.

However, in the interest of gradualism, Cleveland-Cliffs, PAWLUG and Victory Brewing⁹ proposed only a modest increase to the Industrial meter charge. Cleveland-Cliffs respectfully recommends that the Commission either approve PAWLUG witness Ms. Laconte's or Mr. Baudino's proposed rate design for the Industrial class as necessary, and gradual steps toward designing rates that better reflect cost-of-service.

Respectfully submitted,

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⁹ Victory Brewing states in its Main Brief: "As to the proposed rate design, Victory Brewing is supportive of the measures advanced by the witness for Cleveland-Cliffs Steel ("Cleveland-Cliffs"), which would result in higher customer charges and correspondingly lower volumetric charges for industrial customers." Victory Brewing Main Brief, p. 5

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email upon the following persons the 5th day of April, 2024.

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