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May 17, 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 **Pennsylvania-American Water Company's Exceptions to the Recommended Decision of Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge John M. Coogan** dated May 7, 2024 (the "Exceptions").

As evidenced by the enclosed Certificate of Service, copies of the Exceptions are being served upon all parties of record as well as the Commission's Office of Special Assistants as requested in the May 7, 2024 Secretarial Letter.

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

Very truly yours,

Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a true and correct copy of **Pennsylvania-American Water Company's Exceptions to the Recommended Decision of Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge John Coogan** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code Section 1.54:

VIA ELECTRONIC MAIL

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Dated: May 17, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF PENNSYLVANIA-AMERICAN WATER COMPANY

To the Recommended Decision of
Deputy Chief Administrative Law Judge Christopher P. Pell and
Administrative Law Judge John M. Coogan

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Dated: May 17, 2024

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I. INTRODUCTION

On November 8, 2023, Pennsylvania-American Water Company ("PAWC" or the "Company") filed with the Pennsylvania Public Utility Commission (the "Commission") Supplement No. 45 to Tariff Water – Pa. P.U.C. No. 5 and Supplement No. 47 to Tariff Wastewater – Pa. P.U.C. No. 16, requesting an increase in the Company's total annual operating revenues of $203.9 million, or approximately 20.2%, above the level of pro forma revenues for the fully projected future test year ("FPFTY") ending June 30, 2025. The main reason PAWC is seeking to increase its rates in this case is the planned $1 billion that all parties agree the Company should invest in its systems by mid-2025 to address aging infrastructure and continue to provide safe, reliable, and environmentally acceptable water and wastewater service to 780,000 customers in the Commonwealth.

On December 21, 2023, the Commission instituted an investigation of PAWC's existing and proposed rates and the Company's proposed tariffs were suspended by operation of law until August 7, 2024. This matter was subsequently assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge John M. Coogan (the "ALJs") for purposes of conducting hearings and issuing a recommended decision.[1]

On May 7, 2024, the ALJs issued their Recommended Decision ("RD"), proposing that the Commission approve additional annual operating revenues totaling $92,590,004 for PAWC's water operations and $11,492,198 for its wastewater operations. The ALJs clearly spent a great deal of effort sifting through a voluminous record and, for the most part, provide the Commission with a well-reasoned and thorough analysis of the many issues addressed in this

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[1] A detailed history of this proceeding is set forth in the Company's Main Brief dated March 26, 2024 ("PAWC Main Br."). PAWC also filed a Reply Brief ("PAWC Reply Br.") on April 5, 2024, and the Commission is urged to review both briefs in its consideration of these Exceptions.

proceeding. In doing so, the ALJs have considered and properly rejected the more extreme and indeed, unsupported, positions advanced by the opposing parties. As such, the following Exceptions are narrowly limited to the following areas: (1) the determination of an appropriate common equity return rate; (2) rate recognition of the wastewater assets of the Butler Area Sewer Authority ("BASA") that PAWC expects to acquire before June 30, 2025; (3) unreasonable adjustments to the Company's claimed pension and other post-employment benefits ("OPEB") expenses; (4) PAWC's proposed alternative ratemaking mechanisms and requests for deferred accounting treatment; (5) a subset of the RD's directives for PAWC's cost-of-service studies ("COSSs") presented in future base rate cases; (6) unnecessary modifications to PAWC's H2O Help to Others ("H2O Program"); (7) a burdensome requirement for the content of notices provided upon termination under proposed Tariff Rule 12.8; and (8) a single wastewater rate structure issue pertaining to winter averaging.

II. EXCEPTIONS

A. Exception No. 1: The RD Errs by Recommending a 9.45% Return on Equity (RD, pp. 144-45, 167-69)

The RD recommends a return on equity ("ROE") of 9.45%, with a 10-basis point increase for management performance, resulting in a total ROE of 9.55%. In concluding that PAWC was entitled to an ROE of 9.45% before recognition of its management performance, the ALJs found that PAWC had "convincingly argued that the conditions that led the Commission to its determinations in *Aqua 2022* and *Columbia Water 2024*, i.e., higher inflation and associated higher interest rates and capital costs, still exist and are likely to continue."[2] The ALJs further agreed with PAWC that both the Discounted Cash Flow ("DCF") and Capital Asset Pricing

[2] RD, p. 168. The RD cited *Pa. P.U.C. v. Aqua Pa., Inc.*, Docket Nos. R-2021-3027385 and R-2021-3027386 (Opinion and Order entered May 16, 2022) ("*Aqua 2022*") and *Pa. P.U.C. v. Columbia Water Co.*, Docket No. R-2023-3040258 (Opinion and Order entered Jan. 18, 2024) ("*Columbia Water 2024*").

Model ("CAPM") should be used in determining PAWC's ROE in light of these continuing economic conditions, and that the ROE recommendation of 8.45% by Bureau of Investigation and Enforcement ("I&E") witness D.C. Patel based solely on his DCF result must be rejected.[3]

The RD errs, however, in relying upon I&E's DCF and CAPM results in calculating its recommended ROE. While PAWC witness Ann E. Bulkley demonstrated specific errors in I&E witness Patel's DCF and CAPM calculations, the underlying flaw in all his calculations – and the ALJs' reliance on those calculations – stems from Mr. Patel's proxy group, which consisted of only five water utilities.[4] This small proxy group has the effect of magnifying the results of excluding Essential Utilities from his proxy group (unlike both PAWC witness Bulkley and Office of Consumer Advocate ("OCA") witness David Garrett, who each included Essential Utilities in their proxy groups).[5] This error was compounded by Mr. Patel's inclusion of the anomalous DCF results of a single New Jersey utility (Middlesex Water).[6]

By accepting Mr. Patel's flawed proxy group and then relying upon Mr. Patel's DCF and CAPM calculations using that proxy group, the ALJs reached an ROE that is not only below the ROE recommended by Ms. Bulkley but substantially lower than the ROE of 9.75% that the Commission awarded Columbia Water less than six months ago,[7] as well as the authorized Distribution System Improvement Charge ROE of 9.65%.[8]

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[3] RD, pp. 167-168.

[4] RD, pp. 139-41; PAWC Main Br., pp. 46-48 & PAWC Reply Br., pp. 27-30.

[5] PAWC Main Br., pp. 38-40; PAWC Reply Br., pp. 28-30.

[6] PAWC Reply Br., p. 34.

[7] *Columbia Water 2024*, p. 108.

[8] *Report on the Quarterly Earnings of Jurisdictional Utilities for the Year Ended December 31, 2023*, Docket No. M-2024-3048688 (May 9, 2024).

Despite what the Company believes are clear errors in proxy group composition, the Company recognizes that the Commission may not accept the Company's position on each of those errors. Therefore, in order to facilitate the Commission's consideration of this Exception, the Company will discuss each error in turn as explained in Ms. Bulkley's testimony, and show the effect of that error on the ROE using the same DCF and CAPM averaging performed by the ALJs. As an alternative to the adjustments relating to Essential Utilities and Middlesex Water, the Company proposes that the Commission adopt the broader proxy group recommended by Ms. Bulkley comprised of water utilities, gas utilities, and electric utilities with water operations, consistent with the approach of other public utility commissions establishing the cost of equity for water utilities as the water utility industry undergoes consolidation.

1. Essential Utilities Should Be Included in the Proxy Group Used to Calculate PAWC's ROE

Both OCA witness David Garrett and PAWC witness Bulkley included Essential Utilities in their proxy group in calculating their DCF and CAPM results, but Mr. Patel excluded Essential Utilities on the ground that its 2022 regulated water operations constituted less than 50% of its operating revenues.[9] The ALJs agreed with Mr. Patel, noting that exclusion of Essential Utilities was consistent with the Commission's decision in *Columbia Water 2024* and "as the most recent data presented in PAWC's own testimony shows, less than 50% of Essential Utilities' operating revenues comes from regulated water service."[10]

The ALJs' reference to PAWC's testimony is incorrect. At hearings, Ms. Bulkley testified that Essential Utilities' 2023 revenue from regulated water operations as shown in its

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[9] PAWC Main Br., p. 39; PAWC Reply Br., p. 29.

[10] RD, p. 145.

2023 10-K was 56%, above the 50% threshold relied upon by the ALJs and Mr. Patel.[11] Moreover, as Ms. Bulkley also explained, the only reason why Essential Utilities' regulated water operations revenue in 2022 was below 50% – unlike those operations in 2020, 2021, and 2023 – was the higher cost of natural gas and associated revenue from its natural gas operations.[12] When the higher incremental natural gas costs are removed from 2022 financials, Essential Utilities' regulated water operations in 2022 are also above 50%.[13]

The effect of excluding Essential Utilities based on only 2022 data was significant. When using the same DCF and CAPM weighting as the ALJs and with Essential Utilities included, consistent with Ms. Bulkley's testimony, as shown in the table below, PAWC's ROE before the recommended increase for management performance increases more than 20 basis points, to 9.66%.

Cost of Equity Method	Patel Filed Proxy Group	Including Essential Utilities	Reference
DCF	8.45%	8.62%	Exhibit No. 13-R, Schedule 7, Sections 1 & 2.
CAPM	10.44%	10.71%	Exhibit No. 13-R, Schedule 9.
Average	9.44%	9.66%	(8.62 + 10.71%) / 2
Management Performance	0.10%	0.10%	RD, p. 183.
ROE	9.54%	9.76%	

[11] PAWC St. 13-RJ, p. 3.

[12] PAWC Reply Br., p. 29; PAWC St. 13-R, pp. 20-21. As the RD notes, the Commission adopted I&E's proxy group in *Aqua 2022*, which included Essential Utilities at that time. RD, p. 142.

[13] PAWC St. 13-R, pp. 20-21.

2. If the Commission Relies on Mr. Patel's Small Proxy Group, Middlesex Water Should Be Excluded

Each of the cost of equity witnesses for PAWC, OCA, and I&E included the New Jersey utility Middlesex Water in their proxy groups, but the effect in Mr. Patel's five-utility proxy group was disproportionate.[14] When Middlesex Water's DCF result was calculated, the result was a remarkably low 5.77%.[15] This result was at or below the yield on utility bond indexes during these proceedings and would not compensate investors for the added risk of an equity investment.[16] But because of Mr. Patel's small proxy group, the Middlesex Water DCF effectively received a 20% weight in his DCF calculation of 8.45% for PAWC, which the ALJs then relied upon in calculating PAWC's ROE by averaging that DCF result with his CAPM calculation.[17]

The ALJs concluded that Mr. Patel "convincingly explained" that eliminating Middlesex Water would "introduce subjectivity and is inconsistent with the purpose of a proxy group" on the theory that a proxy group, by its nature, "smooths out" anomalous results,[18] but that is simply not the case in a proxy group as small as Mr. Patel's five-utility group. Instead, it overemphasizes an outlier result and leads to an overall anomalous DCF result. The ALJs also noted that Mr. Patel's DCF result was 200 basis points lower than the CAPM result,[19] which demonstrates the issue with the size of the proxy group and the disproportionate weight on a

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[14] PAWC Main Br., pp. 38-39.

[15] *Id.*, p. 48.

[16] PAWC St. 13-R, p. 29.

[17] RD, p. 167.

[18] RD, p. 169; I&E St. 2-SR, p. 18.

[19] RD, p. 168.

single outlier result. That same anomalous DCF result should not then be averaged with I&E's CAPM result to determine PAWC's ROE.

As calculated by Ms. Bulkley in her testimony and as shown in the table below, simply removing the unreasonable result of Middlesex Water from Mr. Patel's proxy group increases Mr. Patel's mean DCF result by 67 basis points to 9.12%. When that number is used in the ALJs' DCF calculation using Mr. Patel's CAPM calculation, the resulting ROE for PAWC before recognition of management performance is 9.78%.

Cost of Equity Method	Patel Filed Proxy Group	Excluding Middlesex Water DCF Result	Reference
DCF	8.45%	9.12%	Exhibit No. 13-R, Schedule 7, Section 1.
CAPM	10.44%	10.44%	Exhibit No. 13-R, Schedule 9.
ROE	9.44%	9.78%	(9.12% + 10.44%) / 2
Management Performance	0.10%	0.10%	RD, p. 183.
Total ROE	9.54%	9.88%	

If the Commission agrees that Essential Utilities should be included and Middlesex Water should be excluded, the effect on the recommended ROE is shown below.

Cost of Equity Method	Patel Filed Proxy Group	Excluding Middlesex Water DCF Result & Including Essential Utilities	Reference
DCF (excludes Middlesex Water result and Includes Essential Utilities)	8.45%	9.19%	Exhibit No. 13-R, Schedule 7, Section 2.
CAPM (Includes Essential Utilities)	10.44%	10.71%	Exhibit No. 13-R, Schedule 9.

Average	9.44%	9.95%	(9.19% + 10.71%) / 2
Management Performance	0.10%	0.10%	RD, p. 183.
Total ROE	9.54%	10.05%	

3. Given the Small Number of Water Utilities, the Commission Should Rely on a Larger Proxy Group of Distribution Utilities.

In the RD (p. 139), the ALJs acknowledged Ms. Bulkley's testimony that ongoing consolidation in the water utility industry had reduced the number of water utilities to only seven companies in the United States, with that number further reduced through proxy group screening criteria (e.g., not being involved in a merger proceeding) to only four companies.[20] In light of this continuing issue and consistent with the actions of other public utility commissions (including in Florida, Illinois and Massachusetts), Ms. Bulkley proposed an 11-company proxy group of four water companies and seven gas utilities and electric utilities with water operations.[21]

In explaining the appropriateness of the inclusion of gas utilities and electric utilities with water operations, Ms. Bulkley detailed a variety of utility similarities, including regulated operations, similar stock performance, underground assets, and a common burden of aging assets in need of replacement.[22] The RD rejected Ms. Bulkley's proposal, agreeing with the OCA that the Commission should focus on a water-only proxy group, and with I&E that companies in the water industry are "the most representative" of the financial and operational risks faced by

20 *Id.*, p. 139.

21 PAWC St. 13, pp. 24-27.

22 PAWC St. 13-R, pp. 22-26; *see also* Tr. 2131-33.

PAWC, electric and natural gas utilities are dissimilar since customers can shop for suppliers, and each utility has different operational, safety and weather risks.[23]

As set forth above, PAWC believes that the small proxy group of water-only utilities has resulted in undue weight being given to the model results of single utilities, particularly Middlesex Water. While Ms. Bulkley included Middlesex Water in her proxy group, the larger proxy group resulted in a less disproportionate effect attributable to Middlesex Water's anomalous DCF result.[24] Furthermore, Mr. Patel conceded that electric and natural gas utilities did not have greater or lesser risks than water utilities, but only different risks.[25]

As an alternative to the specific adjustments proposed by the Company with respect to Middlesex Water and Essential Utilities in this Exception, the Commission should adopt the more robust proxy group used by Ms. Bulkley. The effect on the ROE for PAWC is shown below.

Cost of Equity Method	Patel Filed Proxy Group	Distribution Utility Proxy Group	Reference
DCF	8.45%	9.48%	Exhibit No. 13-R, Schedule 7, Section 5.
CAPM	10.44%	11.24%	Exhibit No. 13-R, Schedule 9.
Average	9.44%	10.36%	(9.48% + 11.24%) / 2
Management Performance	0.10%	0.10%	RD, p. 183.
Total ROE	9.54%	10.46%	

In sum, while the Company continues to believe it is most appropriate to utilize a broader proxy group for purposes of establishing the ROE in this proceeding, the Commission should

[23] RD, p. 145.

[24] PAWC St. 13-R, Exhibit No. 13-R, Schedule 2 (showing the mean result of Ms. Bulkley's inclusion rather than exclusion of Middlesex Water resulting in a 37 point basis-point difference in DCF results).

[25] Tr. 2142.

authorize an ROE of at least 9.76%, reflecting inclusion of Essential Utilities in the proxy group and the ALJs' recommended management performance increase of 10 basis points. This authorized ROE should be increased to 10.05% with the removal of Middlesex Water from the proxy group given its anomalous DCF results. If the Commission further agrees that the proxy group of water-only companies is inadequate, the Commission should adopt the proxy group recommended by Ms. Bulkley and authorize a total ROE of 10.46%.[26]

B. Exception No. 2: The RD Errs by Recommending an Upward ROE Adjustment of 10 Basis Points Instead of 25 Basis Points (RD, pp. 183-184)

In the RD, the ALJs recommend an upward adjustment of PAWC's ROE of 10 basis points under Section 523 of the Public Utility Code in recognition of PAWC's management performance.[27] The ALJs decided to make an upward adjustment based on PAWC's history of acquiring 16 small, less viable water and wastewater systems in the last ten years, including systems that were not providing adequate, safe and reasonable service.[28] The ALJs further relied upon PAWC's provision of service to customers in extraordinary circumstances, with particular reference to PAWC's service to the community of Dimock where residents have not had access to safe well water for more than fifteen years.[29]

In recognizing PAWC's performance and recommending in upward adjustment of 10 basis points, the ALJs referenced the Commission's decision in *Aqua 2022*, where the Commission awarded Aqua an additional 25 basis points for management performance for its

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[26] If the Commission grants PAWC's second Exception relating to management performance, these authorized ROEs would increase by 15 basis points.

[27] 66 Pa.C.S. § 523. Hereafter all references to a "Section" are to the Pennsylvania Public Utility Code ("Code"), 66 Pa.C.S. §§ 101 et seq., unless indicated otherwise.

[28] RD, p. 183; *see also id.*, pp. 173-74.

[29] *Id.*, p. 183.

provision of emergency water services to several communities.[30] However, the ALJs concluded that PAWC's proposed upward adjustment of 25 basis points should be reduced based on the OCA's position that PAWC's performance reflected compliance with its public service obligations rather than extraordinary service, the Company did not show that its service was "exemplary in all areas," and there was a significant amount of criticism of the Company at the public input hearings and through the filing of complaints.[31]

The RD errs in failing to award PAWC its requested 25-basis point adjustment. As reflected in the *Aqua 2022* decision, the 25-basis point adjustment awarded to Aqua by the Commission was derived solely from its history of service to troubled communities.[32] The ALJs provide no explanation distinguishing the assistance provided by Aqua and the service rendered by PAWC, including PAWC's service to multiple communities as receiver for failed water and wastewater systems.[33]

The upward adjustment in *Aqua 2022* also was not based upon any finding of extraordinary or exemplary performance "in all areas," nor is any such requirement imposed under Section 523 of the Public Utility Code. And as reflected elsewhere in the RD, few witnesses at the public input hearings testified regarding customer service issues,[34] and OCA's witness had "no issues" with PAWC's follow-up with customers who had specific complaints or who testified regarding quality of service issues.[35] In light of the evidentiary record, the

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30 *Id.*

31 *Id.*, p. 184.

32 *See Aqua 2022*, pp. 168-173.

33 *See* PAWC Reply Br., pp. 43-44.

34 RD, p. 364.

35 *See* PAWC Main Br., p. 95; OCA St. 7-SR, pp. 5-7.

Commission should revise the ALJs' upward adjustment recommendation and award PAWC a 25-basis point upward adjustment.

C. Exception No. 3: The RD Errs by Disallowing PAWC's Revenue Requirement Claims Related to the BASA Acquisition (RD, pp. 73-77, 84-85, 90, 118, 120).

PAWC's original rate claim included several acquisitions that had not yet closed: the BASA wastewater system, the Brentwood Borough ("Brentwood") wastewater system, the Sadsbury Township Municipal Authority ("STMA") wastewater system, the Audubon Water Company ("AWC") water system, and the Farmington Township ("Farmington") water and wastewater systems (collectively, the "Acquisitions"). Because the BASA and Brentwood acquisitions remained in litigation in early 2024, in the rebuttal phase of this case, PAWC revised its rate claim to propose a three-step approach. In Step 1, which would become effective on August 7, 2024, rates would go into effect to reflect the revenue requirement that excludes BASA and Brentwood. In Step 2, which would take effect after August 7, 2024 <u>and</u> after the Company certifies to the Commission that it has closed on the BASA acquisition, rates would go into effect that reflect the BASA acquisition. In Step 3, which would take effect after August 7, 2024 <u>and</u> after the Company certifies to the Commission that it has closed on the Brentwood acquisition, rates would go into effect that reflect the Brentwood acquisition.[36]

At the evidentiary hearing, PAWC modified its stepped increase proposal in view of the Commission's vote on February 22, 2024 to deny the Brentwood acquisition application. PAWC removed the Brentwood acquisition from its claim in this base rate case, and only asked the Commission to implement Steps 1 and 2 of its stepped rate increase. As PAWC witness Ashley E. Everette testified, "[t]his step methodology will ensure that customers are protected by not

[36] PAWC St. 1-R, p. 5.

allowing any rate changes to occur until the [C]ompany has closed on the purchase of the BASA system."[37]

In the RD (p. 75), the ALJs conclude that "it would be premature to include these Acquisitions in PAWC's FPFTY rate base." The ALJs therefore recommend that the Company's proposed two-step rate increase proposal be denied.

PAWC excepts to the ALJs' recommendation to deny the two-step rate increase proposal and exclude the BASA acquisition from rates because BASA can be distinguished from the STMA, Farmington and AWC acquisitions – it has been approved by the Commission and has a separate revenue requirement such that the rate impact can be implemented conditioned on the transaction closing as approved before the end of the FPFTY.[38] PAWC included the BASA acquisition in this rate case because that acquisition is expected to close before the end of the FPFTY. PAWC reached a unanimous settlement of all issues in the case (the parties who did not join the settlement did not oppose it when it was submitted to the ALJ). The settlement was filed on August 14, 2023. On September 14, 2023, the ALJ issued a Recommended Decision recommending that the settlement be denied, but the Commission approved the settlement and the application in an order entered November 16, 2023. Docket No. A-2022-3037047.

Center and Summit Townships appealed the Commission's decision to the Commonwealth Court of Pennsylvania ("Commonwealth Court") at Docket Nos. 1459 C.D. 2023 and 1460 C.D. 2023, despite not timely opposing the settlement before the ALJ. The Commonwealth Court is considering the matter on an expedited schedule, without oral

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[37] Tr. 1970.

[38] To be clear, PAWC does not except to the ALJs' recommendation to exclude the STMA, Farmington and AWC acquisitions from PAWC's rates at this time.

argument.[39] Briefs have been filed and the parties are awaiting a decision.[40] PAWC expects to close as soon as the decision becomes final and unappealable.[41]

Based on the status of the BASA proceedings at this time, it is reasonably certain that the BASA acquisition will close prior to the end of the FPFTY and therefore should be reflected in base rates established in this case.[42] Acknowledging, however, the concerns of OCA, the Office of Small Business Advocate ("OSBA") and I&E with respect to the certainty of closing the BASA acquisition before the end of the FPFTY and to ensure that customers do not pay increased rates that reflect the BASA acquisition prior to closing the acquisition, the Company proposed the two-step rate increase.

The ALJs conclude that the BASA acquisition should not be included in PAWC's rates at this time because there is no certainty that PAWC will close on the BASA acquisition during the FPFTY. This was in error. Section 315(e) does not require *absolute certainty* that the facilities will be in service by the end of the FPFTY. Indeed, in PAWC's 2020 and 2022 base rate cases, the Commission approved including several acquisitions in PAWC's rates before closing occurred.[43]

If the Commission desires *absolute certainty* that the Company will close on the BASA acquisition prior to the end of the FPFTY before placing those facilities into PAWC's rates, the Company supports the Commission requiring that PAWC certify that closing has occurred on the

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39 *Id.*, pp. 2-3.

40 PAWC has intervened in this proceeding and is supporting the position of the Commission. The primary issue in the pending appeal is whether to affirm the Commission's finding that Center and Summit Townships waived their arguments opposing the settlement by not raising them before the ALJ.

41 Tr. 1988.

42 *See* 66 Pa.C.S. § 315(e) ("The commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.").

43 *See* RD, p. 75 (noting that the Commission had approved most of these acquisitions prior to the close of the record in the pertinent base rate case).

BASA acquisition prior to the end of the FPFTY in order to implement Step 2 of its stepped rate increase proposal. Such a requirement would give the Commission *absolute certainty* that the Company will close on the BASA acquisition prior to the end of the FPFTY – and before increasing rates to reflect that acquisition. If closing on the BASA acquisition does not occur by the end of the FPFTY, Step 2 rates would not be implemented.

In the RD (pp. 76-77), the ALJs also conclude that there is no certainty that the BASA acquisition will close with the same terms approved by the Commission because an appellate court could remand the case to the Commission for further proceedings. The Company does not object to the Step 2 rates being conditioned on a final, non-appealable Commonwealth Court order affirming the Commission's order approving the BASA transaction without modification.

PAWC respectfully submits that the Company's two-step rate increase request, with the conditions described above, reasonably balances consumers' interests in ensuring that rates only include plant-in-service at the end of the FPFTY with the Company's interest in reducing regulatory lag arising from delayed rate recognition of acquired systems. It is prudent and fair for the Commission to timely integrate the BASA acquisition into PAWC's rates to mitigate regulatory lag, one factor that hinders acquisitions, particularly acquisitions of municipal systems pursuant to Section 1329. Whether the BASA acquisition is included in rates after the transaction closes as proposed is a factor that the Company will consider in determining when it will file a future rate case.[44]

Consequently, PAWC respectfully requests that the Commission modify the RD to approve the Company's stepped rate increase with Step 2 rates being implemented following (1) a final, non-appealable Commonwealth Court order affirming the Commission's order approving

[44] PAWC St. 1-R, p. 13.

the BASA transaction without modification and (2) the Company's filing of a certificate that closing has occurred on the BASA acquisition no later than the last day of the FPFTY.

D. Exception No. 4: The RD Improperly Adjusts the Company's Claimed Pension and OPEB Expense Using a Three-Year Average (RD, pp. 124-31)

The RD (p. 131) recommends adopting I&E's proposed adjustments that would reduce PAWC's overall claimed operating expenses by about $6.5 million using a three-year historic average of actual pension and OPEB costs recorded on the Company's books instead of actuarial determinations that have not been challenged by any party. In support of their recommendation, the ALJs rely on the Commission decisions cited by I&E's witness where gas utilities employed "three-year averaging" to account for changes in cash contributions to their pension and OPEB plans between rate cases.[45]

Most Pennsylvania utilities base their claims for pension and OPEB costs on cash contributions to their pension and OPEB plans, which can never be less than zero. However, as noted in the RD (p. 128), in PAWC's 2017 base rate case, the Commission approved the Company's request to cease using cash contributions as the ratemaking measure of pension and OPEB costs and, instead, follow Financial Accounting Standards Board Accounting Standard Codification Topic 715 ("ASC 715"). Under ASC 715, net changes in the actuarial determination of pension and OPEB obligations and associated plan funding levels directly impact the amount reflected on a company's income statement for the applicable accounting period, which can be either expense or income. As explained in PAWC's Main Brief (pp. 31-32) and Reply Brief (pp. 24-25), historic actuarial determinations under ASC 715 do not inform how

[45] RD, p. 131; *see also id.*, pp. 129-30.

future pension and OPEB plan costs will be recorded because the economic and demographic variables used in actuarial forecasts change frequently.

As PAWC also pointed out, the use of a three-year historic average understates the level of expense (or overstates the level of income) that PAWC will record in 2024 based on undisputed actuarial forecasts.[46] The misalignment between the Company's rate allowance and actuarial determination will not be "solved" through the use of a three-year historic average precisely because past performance has no bearing on future performance. This is the very reason why PAWC is requesting Commission approval to defer and record any amounts above or below the actuarial forecasted level of pension and OPEB expenses into regulatory asset or liability accounts until the Company's next base rate proceeding. If a three-year historic average is used to determine the rate allowance, then deferred accounting is necessary to address these fluctuations, for both customers and the Company. In fact, a rate allowance calculated using a three-year historic average, as the RD recommends, would result in *larger* variances between the annual amount of pension and OPEB expenses reflected in base rates and the actual level of expense (or income) PAWC records on its books.

In short, the rationale underlying the ALJs' recommendation, namely, that the use of a three-year historic average will "normalize" PAWC's pension and OPEB expenses between rate cases is refuted by the 2024 actuarial reports and the Company's comparative analysis of its authorized and actual levels of pension and OPEB costs. Therefore, the Commission should approve PAWC's claimed pension expense of $971,071 and OPEB income of $6,496,737.

46 *See* PAWC St. 5-R, p. 5; PAWC St. 8-R, pp 6-8; PAWC Ex. 3-A Revised, pp. 51R-52R; Tr. 2004-06.

E. Exception No. 5: The RD Errs by Denying the Company's Deferred Accounting Request for Pension, OPEB and Production Expenses (RD, pp. 124-31)

The ALJs recommend that the Commission deny that the Company's requests for deferred accounting treatment because in their view, pension, OPEB and production expenses are normal, expected, and recurring costs.[47] The ALJs' recommendation does not comport with either relevant Commission requirements or the record evidence and should be rejected.

While the RD characterizes pension and OPEB plan costs as "routine," the Commission regularly authorizes utilities to defer costs for accounting purposes arising from events that are unanticipated and outside the utility's control to provide the utility an opportunity to claim those costs for recovery in a future rate proceeding.[48] PAWC presented unrefuted evidence that pension and OPEB costs determined on an accrual basis in accordance with ASC 715 can be materially higher or lower than forecasted from year-to-year.[49] This fluctuation occurs because

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47 *See id.*, pp. 126-27, 131.

48 *See, e.g.*, *Petition of Pa.-Am. Water Co. for Auth. to Defer and Record as Regulatory Assets for Future Recovery: (1) Incremental Expenses Incurred Because of the Effects of the COVID-19 Emergency; (2) Revenue Reductions Attributable to the Effects of the COVID-19 Emergency; and (3) Carrying Charges on the Amounts Deferred*, Docket No. P-2020-3022426 (Opinion and Order entered Sept. 15, 2021), pp. 12-13, 30-32, 42, 49-50 (approving deferral of COVID-19–related financial impacts); *Petition of Pa.-Am. Water Co. for Auth. to Defer Expenses Incurred to Pay New Regulatory Fees Imposed by the Pa. Dep't of Env't. Prot.*, Docket No. P-2019-3008253 (Opinion and Order entered May 9, 2019), pp. 3-4 (approving deferral of $840,000 of expenses incurred for new annual fees imposed by the Pennsylvania Department of Environmental Protection); *Petition of Pa.-Am. Water Co. for Auth. to Defer for Accounting and Fin, Reporting Purposes Expenses Relating to a Water Customer Class Demand Study*, Docket No. P-2012-2308982 (Opinion and Order entered Aug. 20, 2012) (approving deferral of $463,000 in expenses related to a demand study agreed to in settlement of PAWC's 2011 rate case); *Petition of Columbia Gas of Pa., Inc. for Auth. to Defer, for Accounting Purposes, Certain Costs Associated with a Regulatory Asset Related to Other Post-Retirement Benefits Provided by NiSource Corporate Serv. Co.*, Docket No. P-2011-2275383 (Opinion and Order entered May 24, 2012) (approving deferral of $903,000 in expenses related to an accounting change for certain retirement-related management fees paid to an affiliate); *Petition of the Newtown Artesian Water Co. for Permission to Defer and Record Unrecovered Purchased Water Costs*, Docket No. P-2010-221420 (Order entered June 1, 2011) (approving deferral of unrecovered purchased water costs totaling $351,929 related to rate increases implemented by the Bucks County Water and Sewer Authority in between rate cases); *Petition of Citizens Utils. Water Co. of Pa.*, Docket No. P-00930746 (Order entered Feb. 25, 1994) (approving deferral of SFAS 106 costs); *Pa. P.U.C. v. Consumers Pa. Water Co. – Roaring Creek Div.*, Docket No. R-932655 (Order entered Feb. 3, 1994) (same).

49 PAWC St. 8, pp. 10-14.

actuarial forecasts reflect numerous economic and demographic assumptions that are outside of PAWC's control, including the expected behavior (e.g., decisions about when to retire) and the life expectancy of the participant group.[50] Deferred accounting authorization is a fair way to ensure that both customers and PAWC only bear *actual* costs incurred for pension and OPEB expenses. The RD also fails to take into account 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.[51]

The ALJs' recommendation is also contrary to the record evidence discussed in PAWC's Main Brief (pp. 32-33) demonstrating that the Company's production expenses can materially increase or decrease based on volatility in the prices charged by suppliers due to market conditions that are outside the control of PAWC and its suppliers.[52] For example, as Company witness J. Cas Swiz testified, the chemical market was extremely volatile in 2022 and 2023 compared to historical levels, driven by many factors such as impacts from the COVID-19 pandemic, the conflict in Ukraine, and inflationary growth in commodity prices.[53] Likewise, energy market prices are higher than they have been in many years, and as a result, PAWC's electric generation suppliers have increased contract rates for power supply and are less willing to lock in prices for 12-month terms.[54] PAWC's proposed accounting deferral for production expenses would protect both the Company and customers against this volatility. Just like the opposing parties throughout this case, the RD also ignores the ways in which PAWC's

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[50] *Id.*

[51] PAWC Main Br., p. 31; *see also* PAWC Ex. JCS-1R.

[52] PAWC St. 8, pp. 17-21.

[53] *Id.*, pp. 18-19.

[54] *Id.*

production costs closely resemble the kinds of costs that the Commission has authorized Pennsylvania energy utilities to recover under Section 1307 (e.g., purchased fuel and power) that are also driven by changes in supplier prices beyond the utility's control.

For the foregoing reasons, the Commission should approve PAWC's proposed deferral mechanisms for its pension, OPEB and production expenses.

F. Exception No. 6: The RD Errs by Rejecting the Company's Proposed Alternative Ratemaking Mechanisms (RD, pp. 290-94, 315-16)

The ALJs denied PAWC's request to establish an Environmental Compliance Investment Charge ("ECIC") and Revenue Decoupling Mechanism ("RDM") in this case even though those mechanisms 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. PAWC disagrees with the ALJs' decision on this issue because, as explained at length in its Main Brief (pp. 69-76) and Reply Brief (pp. 58-64), there is a sound legal, factual, and public policy basis for approving the Company's proposed alternative ratemaking mechanisms. In addition, Commission adoption of the proposed ECIC and RDM for the reasons set forth in this Exception No. 6 does not require a reduction in PAWC's ROE as a few parties suggest.[55] The evidence in this case confirms that alternative ratemaking mechanisms are commonplace in the industry, and approval of the RDM and ECIC simply moves PAWC towards a similar risk level as other companies in the proxy group.[56]

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55 *See* RD, pp. 165, 280; OCA Main Br., pp. 88-91, 93-94; Pennsylvania-American Water Company Large Users Group Main Br., pp. 8-9.

56 *See* PAWC St. 13, pp. 51-53, 57; PAWC St. 13-R, pp. 77-81; PAWC St. 13-RJ, pp. 13, 15.

1. ECIC

Through this rate filing, PAWC has requested Commission approval to establish an ECIC under Section 1330 of the Code 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.[57] PAWC's environmental compliance requirements are continuously evolving and increase the costs of water and wastewater service, driving the need for rate relief. As explained in PAWC's Main Brief (pp. 73-74), 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, uncontroverted record evidence shows that PAWC faces environmental compliance costs to the tune of $200 million by 2027 for just one set of evolving government mandates concerning per- and polyfluoroalkyl substances ("PFAS").[58] Consistent with the policy declaration incorporated into Section 1330, 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.

The ALJs offer three reasons for their recommendation to deny the ECIC (RD, p. 307): (1) approving the ECIC would constitute impermissible "single issue ratemaking;" (2) a full and fair ratemaking review of environmental compliance costs can only occur in the context of a base

[57] PAWC St. 1, pp. 26-27; PAWC St. 8, pp. 21-30.

[58] *See* PAWC St. 3, pp. 5-7. Notably, on April 26, the U.S. Environmental Protection Agency finalized the first national legally-enforceable drinking water standards for six PFAS that were discussed by Company witness Bruce W. Aiton. *PFAS National Primary Drinking Water Regulation*, 89 Fed. Reg. 32532 (Apr. 26, 2024). As Mr. Aiton explained, those federal PFAS standards require public water systems to modify their facilities to comply within three years – i.e., by June 2027. *See* PAWC St. 3, pp. 6-7.

rate proceeding; and (3) PAWC's proposal is premature. PAWC submits that none of these reasons warrant rejection of the ECIC.

At the outset, the RD vastly overstates the scope and import of the prohibition against single issue ratemaking. One of the alternative rate mechanisms explicitly authorized by Section 1330(b)(2) is an automatic adjustment clause like the ECIC. If the single issue ratemaking principle were applied to all cost items comprising a utility's revenue requirement as the RD suggests, Section 1330 would be a nullity. Because the ECIC is permitted under the Code and PAWC's proposed environmental compliance plan ("ECP") process provides a reasonable procedure to determine the prudence and reasonableness of the charges outside of a base rate case, the doctrine of single issue ratemaking does not apply.

The RD (p. 307) also asserts that "the only way to have a full opportunity to review the [ECP] is within the confines of a rate case." That contention, which was made repeatedly by parties opposed to the ECIC, is not correct. If the ECIC is approved, the Commission and interested parties will have ample opportunity to proactively evaluate and challenge PAWC's proposed investments and measures to comply with new and updated environmental mandates *before any costs are incurred*.[59] Whether or not a party is inclined to review the Company's ECP and focus attention on the associated capital costs and expenses is at the discretion of each party, but PAWC's proposal allows for full and fair ratemaking review of ECIC-eligible costs.[60] Moreover, automatic adjustment of rates for infrastructure investments is not a new concept. 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

59 PAWC St. 8-R, p. 11.

60 *Id.*

reconcilable surcharge that allows for the recovery of environmental compliance costs.[61]

Finally, the RD (p. 307) states that implementing an environmental compliance surcharge for just one Pennsylvania utility is premature and that it is "impossible" to evaluate the ECIC with the limited data presented by the Company on the bill impact of the charge. However, the Code requires utilities to propose alternative rate mechanisms as part of a base rate case, so it is timely for the Company to propose the ECIC in this case in advance of the need to file its first ECP, particularly given the timing and magnitude of the investments required under the new federal PFAS regulation just finalized last month.[62] PAWC analyzed how the fourteen factors in the Commission's alternative ratemaking policy statement support the ECIC in PAWC Exhibit JCS-1, which means the Commission has all of the information necessary to evaluate it as part of this proceeding.[63] Moreover, as Mr. Swiz explained, Bill Discount Program ("BDP") participants will receive a discount on ECP costs. Consequently, the impact of PAWC's environmental compliance costs on low-income customers will be the same regardless of whether those costs are recovered through base rates or an alternative ratemaking mechanism.

2. RDM

PAWC also requests Commission approval to establish an RDM to reduce revenue volatility resulting from declining consumption and other unanticipated events that can impact forecasted usage. This is an acute concern for the Company because approximately 81% of PAWC's water and wastewater revenues are collected under volumetric rates while over 95% of its costs are fixed.[64] This means that unanticipated usage events can have a material impact on

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61 PAWC St. 8, p. 23.

62 66 Pa.C.S. § 1330(b)(1).

63 *See* 52 Pa. Code § 69.3302.

64 PAWC St. 10, p. 86.

the Company's revenues – with the potential for both over- or under-recovery. As explained in the Company's Main Brief (pp. 69-73) and Reply Brief (pp. 59-62), the RDM seeks to couple benefits of traditional rate design with increased revenue stability that is afforded by straight-fixed variable ("SFV") pricing by comparing revenues collected under Commission-approved rates with revenues that would have been collected through SFV pricing. If actual revenues are higher than what would have been collected under the RDM formula, the difference is credited to customers in the following year. If actual revenues are lower than what would have been collected under the RDM formula, the difference will be collected from customers in the following year.

Despite the fact that decoupling mechanisms such as the RDM are explicitly authorized by Section 1330(b)(2),[65] the ALJs recommend denying the RDM, finding that (1) the RDM will negate consumer conservation efforts; (2) the Company is already protected against potential revenue shortfalls through Section 1311(c), use of a FPFTY, its Distribution System Improvement Charge ("DSIC"), and frequent rate case filings; (3) the RDM does not provide customers with rate stability and can place low-income customers in greater risk of arrears and termination as a result of increased unaffordability; (4) the Company did not take a "firm position" on the RDM's impact on the frequency of rate case filings; and (5) the RDM will not be understandable to customers.[66]

The Company addressed each of these concerns in great detail in its Main Brief (pp. 69-73) and Reply Brief (pp. 59-62) and in the testimony of PAWC witness Charles B. Rea. The Company also provided a detailed response[67] as to how the RDM addresses each of the 14

[65] 66 Pa. C.S. § 1330(b).

[66] RD, pp. 292-93.

[67] PAWC St. 10, p. 101; PAWC St. 10-R, pp. 70-71; PAWC Ex. CBR-10.

factors set forth in the Commission's policy statement on distribution rate considerations.[68] The ALJs do not meaningfully address the substantial record evidence provided by the Company, which demonstrates that the RDM will not negatively impact conservation efforts since the RDM will not remove any incentive (financial or otherwise) to reduce water consumption; ratemaking tools such as Section 1311(c), the FPFTY, and DSIC do not adequately address revenue volatility; and low-income customers will not be negatively impacted by the RDM. In addition, the ALJs did not reach findings of fact in support of almost all of their bases for rejecting the RDM. The Commission should therefore find that the RDM is a just and reasonable ratemaking mechanism that will mutually benefit the Company and customers and should be approved.

G. Exception No. 7: The RD Errs by Recommending That PAWC Update Its System-Wide Analysis of Maximum Hour Extra Capacity Demands Prior to Its Next Base Rate Case (RD, pp. 189-91, 194-95)

In this case, the OCA and OSBA challenge the maximum day and maximum hour factors employed by Company witness Constance E. Heppenstall in the cost-of-service study ("COSS") for PAWC's water operations ("Water COSS"), asserting that they are out of date.[69] The RD (pp. 194-95) found that PAWC's Water COSS methods and factors are reasonable and consistent with past practice. Nonetheless, the ALJs agree with the OCA that PAWC should update its

[68] 52 Pa. Code § 69.3302.

[69] *See* OCA Main Br., pp. 61-65; OSBA Main Br., pp. 14-17; OCA Reply Br., pp. 39-41; OSBA Reply Br., pp. 10-11.

analysis of system wide maximum hour demands and include the results in the Water COSS presented in the Company's next base rate proceeding.[70]

The RD's recommendation for a large, multi-year study of PAWC's system-wide maximum hour demands prior to its next rate case is unwarranted. As explained in PAWC's Main Brief (pp. 56-57) and Reply Brief (p. 48), no party even alleged, let alone offered any valid basis to contend, that the results of the Company's 1988 study of actual maximum hour send-outs from water storage tanks are inaccurate. Moreover, in performing such an analysis, PAWC faces challenges in accurately measuring maximum hour demand in districts with multiple groundwater sources due to a number of factors, such as missing SCADA connections, tank filling, and metering issues.[71]

H. Exception No. 8: The RD Errs by Ordering PAWC to Continue to Prepare a Separate Cost of Service Study for Each System Acquired Under Section 1329 of the Public Utility Code After the Initial Base Rate Proceeding Following Such Acquisition (RD, pp. 202-03)

PAWC takes exception to the RD's recommendation (p. 203) that PAWC maintain separate COSSs for systems acquired under Section 1329 after the initial base rate case where the acquisition is reflected in the Company's revenue requirement.[72] The completion of a COSS for newly acquired systems in the first base rate case in which the system is included in rate base is consistent with PAWC's current practice. After the initial base rate case, the preparation of additional COSSs for each acquired system for all future rate cases would be extraordinarily time-consuming and unnecessary based on PAWC's movement toward single tariff pricing. The Commission should reject this recommendation and continue its approach of moving toward

[70] RD, p. 195.

[71] PAWC St. 12-R, p. 10.

[72] The Company is not excepting to the ALJs' recommendation that PAWC prepare separate COSSs for Section 1329 acquisitions in the first base rate proceeding where the systems are included in revenue requirement.

single tariff pricing for all of PAWC systems, including those acquired under Section 1329.[73] As Ms. Everette pointed out, in PAWC's two most recent base rate cases, the Commission approved rates for Section 1329 acquisitions that made significant progress toward single tariff pricing.[74]

In addition, the ALJs' recommendation is cumbersome and will add unnecessary complexity in future rate cases. The Company has completed 10 fair market value acquisitions since Section 1329 was enacted, and each of those systems has already been consolidated with the revenue requirement studies and COSSs for PAWC's water and general wastewater sanitary sewer system ("WW SSS") operations.[75] The ALJs' recommendation will increase the number of separate COSSs that the Commission and the parties would need to review in future rate cases without a meaningful corresponding benefit given the continued progress toward single tariff pricing.

I. Exception No. 9: The RD Improperly Recommends That PAWC Include Rider Demand Industrial Service ("DIS") and Rider Demand Resale ("DRS") Customers in a Separate Class in Future Cost-of-Service Studies for Water Operations (RD, p. 203)

The Commission should not require PAWC to include Rider DIS and DRS customers in a separate customer class in the Company's Water COSS presented in its next rate case as the ALJs recommend in the RD (p. 203). As Ms. Heppenstall explained, Riders DIS and DRS authorize PAWC to negotiate contracts at rates, with specified minimum and maximum levels, designed to retain or attract industrial and resale load for which the customer or applicant for service has a viable competitive alternative that the customer intends to select to the detriment of the Company and its other customers.[76] In approving Riders DIS and DRS, the Commission

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[73] PAWC Main Br., p. 59.

[74] PAWC St. 1-R, p. 31.

[75] *Id.*

[76] PAWC St. 12-R, p. 11.

found that those riders create benefits for all PAWC water customers by preserving or attracting incremental sales that, because of competitive forces, could not otherwise be made.[77] Accordingly, the revenues derived from Rider DIS and DRS customers are appropriately reflected as a deduction to all classes' cost of service. PAWC should be permitted to continue this approach in future rate cases.

J. Exception No. 10: The RD Errs by Recommending Changes to the Eligibility Requirements for PAWC's Hardship Fund (RD, pp. 325-27)

As explained in the Company's Main Brief (p. 83), the H2O Program provides Hardship Grants for qualifying customers with annual household incomes at or below 200% of the Federal Poverty Level ("FPL") and that have made a payment of at least $50 over the last 90 days. Hardship Grants are funded through an annual shareholder donation (currently $625,000 for water and $125,000 for wastewater) as well as customer and employee donations.[78]

The RD recommends adopting two changes to modify the eligibility requirements for the Hardship Fund: (1) raise the income threshold from 200% to 250% of FPL, as proposed by the OCA[79]; and (2) eliminate the good faith payment requirement of $50, as proposed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA").[80] The ALJs reasoned that such changes would open up Hardship Fund assistance to financially-distressed customers with somewhat higher household income or with less favorable payment history.[81]

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[77] *Id.*

[78] PAWC St. 9, pp. 13-14; PAWC St. 14-R, pp. 15-16.

[79] RD, pp. 324-25, 327-28; OCA Main Br., pp. 98-99.

[80] RD, pp. 325-28; CAUSE-PA Main Br., pp. 51-57.

[81] RD, pp. 327-28.

The Commission should reject the proposed adjustments to Hardship Fund eligibility to preserve the Fund's focus on supporting customers with lower incomes and with good faith payment behavior. The funds available for Hardship Grants are not unlimited and could be depleted before the end of the program year if PAWC adopts the changes recommended in the RD. As explained above, the funding is drawn from an annual shareholder donation as well as donations from employees and customers. It is reasonable and appropriate for the Company to dedicate funds to lower-income customers and customers who, in the Company's experience, are making a sincere effort to pay their utility bills.[82] While PAWC has separately agreed to raise the FPL threshold to 250% of FPL as part of the global Commission-approved settlement of the BASA acquisition proceeding, it is important to note that this change was paired with increased shareholder funding ($700,000 annually for five years).[83]

K. Exception No. 11: The RD Improperly Adopts Unreasonable and Unnecessary Low-Income Data Collection and Reporting Requirements Proposed by CAUSE-PA (RD, pp. 338-41)

CAUSE-PA recommended that PAWC be required to: (1) establish quantitative and qualitative outreach goals for the BDP and Arrearage Management Plan ("AMP");[84] (2) update its low-income customer count annually; (3) set BDP enrollment benchmarks at 20% per year of estimated low-income customer counts until 75% enrollment is achieved; and (4) track and report relevant data concerning the Company's "progress" to its Customer Assistance Advisory Group ("CAAG") to help refine outreach efforts.[85]

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[82] PAWC St. 14-R, pp. 15-16.

[83] Tr. 2024. Further, as explained by PAWC witness Tawana Dean, the Hardship Fund changes in the BASA settlement were driven by the approximately 14,000 new residential customers that PAWC would serve after the acquisition. *Id.*

[84] The AMP is scheduled to be implemented later this year. PAWC St. 1, p. 13.

[85] CAUSE-PA St. 1, pp. 47-48.

The RD adopts CAUSE-PA's "recommendations regarding data collection and reporting,"[86] citing a generalized concern about connecting customers having financial difficulty with assistance programs.[87] The ALJs did not, however, address the substantial record evidence demonstrating that CAUSE-PA's recommendations were either unnecessary or unreasonable. First, without formalizing enrollment benchmarks or outreach goals, the Company has been deploying a robust and multi-prong outreach strategy that has facilitated a 30% increase in BDP participation between December 2020 and November 2023.[88] Notably, in the "Low-Income Customer Outreach, Screening, and Intake" portion of the RD, the ALJs recommend that the Commission reject all of the OCA and CAUSE-PA proposals "regarding low-income customer outreach."[89] The ALJs do not explain why enrollment benchmarks or outreach goals are necessary or appropriate when they have otherwise rejected all proposals to modify the Company's existing outreach strategy.

Second, the Company's H2O Programs are entering a period of transition as PAWC will begin implementing a brand-new program (the AMP) and new income verification procedures later this year. Currently, verbal income information is sufficient to enroll in the BDP, and the vast majority of BDP participants have not provided income documentation to PAWC. In the near future, however, customers will be required to submit income documentation as part of the AMP and the BDP. The income verification requirement may result in some customers leaving

86 RD, p. 346. The RD does not explain if establishing outreach goals and enrollment benchmarks are included in the ALJs' recommended actions. PAWC's response assumes that the ALJs' recommend adoption of all CAUSE-PA proposals, but the Company requests that the Commission clarify this issue.

87 *Id.* at 345-46.

88 PAWC St. 9, pp. 14-16; PAWC St. 14-R, pp. 7-8.

89 RD, p. 341.

the BDP while other customers may newly enroll as a result of new benefits under the AMP.[90] CAUSE-PA's proposed enrollment benchmarks are unreasonable when the enrollment levels are expected to fluctuate over the next few years.

Finally, PAWC already has quarterly CAAG meetings during which the Company shares relevant information and, as part of the settlement of the AMP proceeding, PAWC is obtaining CAAG feedback on a draft communication and outreach plan for the AMP.[91] The RD does not address why these existing processes to regularly share information with and solicit feedback from the CAAG are insufficient. For all these reasons, the Commission should reject the ALJs' recommendations concerning low-income data collection and reporting.

L. Exception No. 12: The RD Errs by Recommending That Notices Upon Termination Under Tariff Section 12.8 Provide the Name and Contact Number for the Applicable Non-Company Wastewater Provider Where the Company Has over 120 Non-Company Wastewater Providers (RD, p. 374)

PAWC proposed Tariff Section 12.8[92] to address termination at the request of a non-Company wastewater provider. As OCA has acknowledged, the Company's proposed tariff language reflects many of the OCA's proposals in this proceeding.[93] The ALJs adopted a further OCA recommendation, however, that notices provided upon termination under Tariff Section 12.8 ("Section 12.8 Notices") include, among other things, contact information for the Company and the name and contact number of the non-Company wastewater provider.[94] The ALJs

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[90] PAWC St. 14-R, pp. 9-10.

[91] *Id.*, p. 9.

[92] PAWC proposed Water Tariff Section 12.1(H) in its original filling to address termination at the request of a non-Company wastewater provider. PAWC St. 4, p. 34. In rebuttal, the Company replaced proposed Section 12.1(H) with a proposed new Section 12.8. PAWC St. 4-R, pp. 10-11.

[93] PAWC St. 4-R, pp. 10-12 (explaining that many of the OCA proposals reflected actual Company practices that are already in place); OCA St. 6-SR, p. 17 ("The Company has agreed to revise its proposed Tariff language to reflect my recommendations with one exception.").

[94] RD, p. 372 (displaying OCA proposed tariff redline), p. 374 (adopting OCA's proposed language).

reasoned that such additional notice requirements would provide further protection for customers.[95]

PAWC accepts the recommendation to provide Company contact information as part of Section 12.8 Notices but the Commission should reject the proposal to require inclusion of the name and contact number of the non-Company wastewater provider. As PAWC witness Tawana Dean explained, PAWC has shut off agreements with over 120 non-Company wastewater providers.[96] The Company believes that customers will be appropriately protected by receiving Company contact information and that it would be unduly burdensome to require the production of over 120 different versions of a Section 12.8 Notice with individualized contact information for each non-Company wastewater provider.[97]

M. Exception No. 13: The RD Errs in Recommending Denial of the Company's Winter Averaging Proposal for Wastewater Customers (RD, pp. 264-65)

Many of the Company's customers have expressed concern over their charges for seasonal outdoor water usage. This very issue was highlighted in many of the customer comments summarized in Section IV of the RD.[98] The Company included its winter averaging proposal to more closely align wastewater bills with cost-causation and to specifically address this customer concern.

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95 *Id.*, p. 374.

96 Tr. 2022.

97 PAWC further notes that no party has evaluated the cost of implementing the individualized notices. As Ms. Dean explained, the Company has not had the opportunity to discuss the notice changes with non-Company wastewater providers nor evaluate the feasibility of making the notice changes. Tr. 2022-23.

98 *See* RD, pp. 49-52 (*e.g.*, "[customer] testified that she shouldn't pay for sewage she doesn't use . . .;" "[customer] questioned PAWC's wastewater calculation, stating "water in is not always water out;"" "[customer] testified that he filled his pool up and had to pay for sewage service he didn't use as a result;" "[customer] testified that he pays for sewage service for water where the water doesn't go into the sewer;" "[customer] testified that she is charged for wastewater whether or not water goes down the drain;" and "[customer] testified that there is no leeway in summer months for customers that have a pool, or cars being washed at home where the water doesn't go to the sewer.").

While I&E and the OCA criticize the effectiveness of the Company's proposal and the OCA and CAUSE-PA assert that winter averaging will penalize low-income customers,[99] the Company continues to maintain that winter averaging will benefit customers and more closely align summer wastewater bills with cost-causation rate design principles.[100] The ALJs fail to address the record evidence that the Company's proposal is statistically supported, that winter averaging will benefit both higher- and lower-income customers,[101] and that other utilities, including affiliates of the Company, have successfully implemented winter averaging in other jurisdictions to the benefit of customers.[102]

III. CONCLUSION

For the reasons set forth above, the Commission should grant the Company's Exceptions and adopt the Recommended Decision with the modifications described herein.

Respectfully submitted,

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[99] *See* RD, pp. 259-64.

[100] *See* PAWC St. 10, pp. 43-44.

[101] *See* PAWC Reply Br., pp. 56-57.

[102] PAWC St. 10, pp. 43-44.