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August 16, 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 **Answer of Pennsylvania-American Water Company to the Petition for Reconsideration of the City of Scranton** (the “Answer”).

As evidenced by the enclosed Certificate of Service, copies of the Answer are being served upon the presiding Administrative Law Judges 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/nt

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 the **Answer of Pennsylvania-American Water Company to the Petition for Reconsideration of the City of Scranton** 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: August 16, 2024

*Counsel for
Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	DOCKET NOS. R-2023-3043189
v.	:	R-2023-3043190
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
	:	

**ANSWER OF PENNSYLVANIA-AMERICAN WATER COMPANY TO THE PETITION
FOR RECONSIDERATION OF THE CITY OF SCRANTON**

Pursuant to 52 Pa. Code §§ 5.572(e), Pennsylvania-American Water Company (“PAWC” or the “Company”) hereby files this Answer opposing the “Petition to Reconsider and Amend July 11, 2024 Order of the City of Scranton” (“Petition”). Following a brief introduction, in Section II below, PAWC provides an overview of the reasons why the City of Scranton’s (“City’s”) Petition lacks merit and should be dismissed. In Section III of this Answer, the Company addresses each of the separately numbered paragraphs in the Petition.

I. INTRODUCTION

On November 8, 2023, 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 ending June 30, 2025. 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

In addition to the Commission’s Bureau of Investigation and Enforcement, 12 parties actively participated in this proceeding, including the City. The City opposed any water and wastewater rate increases for Scranton residents based on concerns raised by its witnesses Mayor Paige G. Cagnetti and Teri Ooms regarding the affordability of PAWC’s services given the City’s poverty rates and service issues reported by the Mayor’s constituents. *See* City St. 1, pp. 3-6; City St. 2, pp. 2-5; City Br., pp. 1-2; City Exc., pp. 2-5.

On July 22, 2024, the Commission entered its 409-page Opinion and Order (“Order”) in this proceeding, approving a total annualized revenue increase of \$99.3 million and the Company’s proposed enhancements to its customer assistance programs, including expanding its bill discount program to include customers between 151% and 200% of the Federal Poverty Level. As part of its decision approving this rate increase, the Commission rejected the City’s arguments but initiated an investigation into reported water service and water quality issues in the Company’s Northeastern service territory based on customer complaints filed in this proceeding and testimony given at public input hearings. *See* Order at 11-13, 394-95.

II. SUMMARY AND OVERVIEW

In its Petition, the City asks the Commission to reconsider and/or amend its decision approving a rate increase for the Company and rejecting the City’s argument that PAWC failed to meet its burden to support any rate increase. As part of that request, the City seeks a “stay” of the rate increases approved in the Order applicable to the Company’s Scranton-area customers “unless and until” the Commission’s investigation of the quality of service in PAWC’s

¹ A detailed history of this proceeding is set forth on pages 4-8 of the Order.

Northeastern service region concludes with no findings of violations of state and federal laws governing safe drinking water.² The City states that its request was “inspired” by “remarks regarding a stay” in the Statement of Commissioner Kathryn L. Zerfuss issued in this proceeding on July 11, 2024.³

The City’s Petition should be denied because it fails to meet the well-established standard for granting reconsideration under *Duick*.⁴ The Petition seeks only to have the Commission address, for a second time, an issue that was already thoroughly considered by the Commission and decided against the City – that all Scranton customers should not have to pay *any* rate increase in light of customer complaints about service and water quality. As a review of the Petition reveals, the City does not present any “new and novel arguments, not previously heard,” nor does it articulate any “considerations” that were “overlooked or not addressed by the Commission,” as required by the Commission’s well-established standards.⁵ The Petition simply rehashes the same arguments advanced in Mayor Cognetti’s testimony and in the City’s brief, which were rejected in the Order. The Commission reviewed the quality of service concerns in the Scranton area raised in complaints and at the public input hearings and, instead of denying any rate increase in the City and the greater Lackawanna County region as the City requested in its testimony, Main Brief, and Exceptions, decided to initiate an investigation into those service quality issues. *See* Order at 8-13, 68-75. The Commission dedicated 175 pages in the Order analyzing the record evidence supporting its conclusion that an overall annual revenue increase

² *See* Petition at 6, 8-9.

³ *See id.* at 7.

⁴ *See Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 558-59 (1985) (“*Duick*”).

⁵ *Id.*

of \$99.3 million (\$88.1 million for PAWC’s water operations and \$11.2 million for its wastewater operations) is just and reasonable.⁶

In addition, in Paragraph Nos. 6, 7, and 9 of the Petition, the City conflates comments in the Statement of Commissioner Zerfuss about *voluntary* rate case stay-out settlement provisions with the City’s request to stay the rate increases approved by the Commission. A rate case stay-out agreement, as discussed by Commissioner Zerfuss, could provide a time buffer against *future* subsequent rate increase requests by the Company but would not “stay” the effect of the rate increases authorized by the Order on and after August 7, 2024.⁷ The City also does not even attempt to establish any of the four criteria for issuance of a stay of a final Commission Order, including that the requested stay is necessary to prevent irreparable injury and will not substantially harm other parties.⁸ Consequently, reliance upon Commissioner Zerfuss’ remarks provide no justification for reconsidering the Commission’s rejection of the City’s litigated position.

The City attempts to satisfy the rigorous legal standard established in *Duick* by claiming that a consent order and agreement PAWC entered into with the Pennsylvania Department of Environmental Protection on June 20, 2024 (“Consent Order”) to address a sediment release that affected Lackawanna County waterways – after the close of the record in this case – further confirms poor water quality in the City and justifies reconsideration of the rate increase

⁶ See Order at 25-200.

⁷ Absent a negotiated “stay out” provision, the Commission does not have the authority to order a public utility to “stay out” from filing a subsequent general rate increase request beyond the nine-month suspension period contained in Section 1308(d.1) of the Public Utility Code. See *Pa. P.U.C. v. Community Utilities of Pa. Inc.*, Docket No. R-2021-3025206, 2022 WL 143145 at *28-*29 (Jan. 13, 2022). Hereafter all references to a “Section” are to the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. §§ 101 *et seq.* unless indicated otherwise.

⁸ *Pa. P.U.C. v. Process Gas Consumers Group*, 467 A.2d 805, 808-09 (Pa. 1983).

authorized in the Order. However, the City again fails to meet the *Duick* standard. The City does not offer any detail regarding the Consent Order or any substantiating facts as to why its existence should be considered material “new” evidence or evidence of a change in circumstances that would warrant reconsideration. As previously discussed, the Commission carefully considered the quality of service concerns in the Scranton region presented in the City’s testimony and at the public input hearings and approved a rate increase. A further investigation regarding water quality allegations in Northeastern Pennsylvania also was ordered by the Commission, but this future investigation has no impact on the approved rate increase.

In sum, by filing its Petition, the City is simply asking the Commission, for a second time,⁹ to deny *any* rate increase for Scranton-area customers due to quality of service concerns, a position the Commission thoroughly considered and properly rejected in the Order. As such, the City’s contentions do not meet the *Duick* standard and, therefore, there is no valid basis for the Commission to reconsider the overall revenue increase authorized in the Order and stay the effect of the rate increases applicable to PAWC’s Scranton-area customers.

III. ANSWERS TO THE AVERMENTS IN THE NUMBERED PARAGRAPHS OF THE CITY’S PETITION FOR RECONSIDERATION

1.-2. The averments of Paragraph Nos. 1 and 2 are requests for relief to which no response is required. By way of further response, the arguments and considerations in support of reconsideration and amendment of the Order fall short of the standards for reconsideration outlined in *Duick* for the reasons explained in Section II above.

3. Denied. In Paragraph No. 3, the City selectively quotes from a 1956 Pennsylvania Common Pleas Court decision to erroneously suggest that the Commission may

⁹ See City Br., pp. 1-2; City Exc., pp. 2-5.

prescribe temporary rates for PAWC’s Scranton-area customers during the investigation initiated in the Order. Section 1310 of the Public Utility Code allows the Commission to set temporary rates for a utility *except in a proceeding involving a general rate increase*.¹⁰ In reality, the City’s claims regarding temporary rates are simply another iteration of its position that PAWC’s Scranton-area customers should not have to pay any rate increases until quality of service issues are resolved, which was considered and rejected by the Commission in the Order.

4. Denied. Section 1504 of the Code provides the Commission with authority to prescribe just and reasonable standards relating to a public utility’s facilities through regulations. Contrary to the City’s assertion, Section 1504 does not permit the Commission to “stay” the effect of approved rate increases pending an investigation.

5. The averment in Paragraph 5 is a restatement of the first three sentences of 66 Pa. C.S. § 1501 to which no response is required. By way of further response, the Company admits that it has an obligation to comply with 66 Pa. C.S. § 1501.

6. Denied. By way of further response and as explained in Section II above, the City misconstrues Commissioner Zerfuss’ July 11, 2024 remarks regarding the lack of a negotiated future rate case stay out provision as Commission authority to “stay” the effect of the rate increases on PAWC’s Scranton-area customers authorized by the Order on and after August 7, 2024.

7. The Company can neither admit nor deny the averment set forth in Paragraph 7 as the Company does not have knowledge regarding the City’s rationale for filing the Petition.

8. Denied as stated. The Consent Order is a written document and speaks for itself.

¹⁰ 66 Pa.C.S. §§ 1308(d) and 1310 (emphasis added).

9. The averments in Paragraph 9 are requests for relief to which no response is required. By way of further response, the arguments and considerations in support of reconsideration and amendment of the Order do not satisfy the rigorous standards for reconsideration outlined in *Duick* for the reasons explained in Section II above.

WHEREFORE, for the foregoing reasons, the City has failed to set forth any valid basis for the Commission to grant reconsideration and amend the Order under the *Duick* standard and PAWC respectfully requests that the Petition be denied.

Respectfully submitted,



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