



November 12, 2024

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

**VIA E-FILE**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17120

**Re: *Nunc Pro Tunc* Petition of Pennsylvania-American Water Company for Limited Waiver of 52 Pa. Code § 56.11(a) and Related Tariff Provisions; Docket No. P-2024-3051518**

**Pennsylvania-American Water Company's Preliminary Objections to the Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are Pennsylvania-American Water Company's Preliminary Objections to the Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito

Counsel for *Pennsylvania-American Water Company*

DPZ

Enclosures

cc: Per Certificate of Service  
Elizabeth Rose Triscari, Esq.  
Teresa K. Harrold, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

*Nunc Pro Tunc* Petition of Pennsylvania-American :  
Water Company for Limited Waiver of 52 Pa. Code : Docket No. P-2024-3051518  
§ 56.11(a) and Related Tariff Provisions :

**CERTIFICATE OF SERVICE**

I hereby certify that I am this 12<sup>th</sup> day of November, 2024, serving **Pennsylvania-American Water Company’s Preliminary Objections to the Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Service by First Class Mail and Email**

Steven C. Gray, Esq.  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1st Floor  
Harrisburg, PA 17101  
E-mail: sgray@pa.gov  
E-mail: ra-sba@pa.gov  
Representing *Office of Small Business Advocate*

Allison Kaster, Esq.  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street – 2 West  
Harrisburg, PA 17120  
E-mail: akaster@pa.gov  
Counsel for *Bureau of Investigation and Enforcement*

Christy Appleby, Esq.  
Barrett Sheridan, Esq.  
Office of Consumer Advocate  
555 Walnut St.  
Forum Place, 5th Floor  
Harrisburg, PA 17101  
CAappleby@paoca.org  
BSheridan@paoca.org  
Representing the *Office of Consumer Advocate*

John W. Sweet, Esq.  
Ria M. Pereira, Esq.  
Elizabeth R. Marx, Esq.  
Lauren Berman, Esq.  
118 Locust St.  
Harrisburg, PA 17101  
PULP@pautilitylawproject.org

Respectfully submitted,



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David P. Zambito, Esq.  
Counsel for *Pennsylvania-American Water  
Company*

**VERIFICATION**

I, Deborah A Degillo, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 11/12/24

A handwritten signature in blue ink, consisting of a large, stylized initial 'D' followed by a long, horizontal flourish.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

*Nunc Pro Tunc* Petition of Pennsylvania-American :  
Water Company for Limited Waiver of 52 Pa. Code : Docket No. P-2024-3051518  
§ 56.11(a) and Related Tariff Provisions :

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO THE REGULATIONS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AT 52 PA. CODE § 5.101(f), YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITH THE SECRETARY'S BUREAU OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AT THE FOLLOWING ADDRESS:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2nd Floor)  
P.O. Box 3265  
Harrisburg, PA 17105-3265

AN ANSWER MAY BE FILED WITHIN TEN (10) DAYS OF THE DATE OF SERVICE OF THESE PRELIMINARY OBJECTIONS. FOR MORE INFORMATION REGARDING THE FILING OF AN ANSWER, PLEASE CONTACT THE SECRETARY'S BUREAU AT (717) 772-7777. A COPY OF ANY ANSWER SHOULD BE SERVED ON THE UNDERSIGNED COUNSEL.



Elizabeth Rose Triscari, Esq. (PA ID 306921)  
Teresa Harrold, Esq. (PA ID # 311082)  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
E-mail: elizabeth.triscari@amwater.com  
E-mail: teresa.harrold@amwater.com  
Telephone: (717) 550-1574

David P. Zambito, Esq. (PA ID 80017)  
Jonathan P. Nase, Esq. (PA 44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
E-mail: dzambito@cozen.com  
E-mail: jnase@cozen.com  
Telephone: (717) 703-5892

Date: November 12, 2024

Counsel for *Pennsylvania-American Water Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

*Nunc Pro Tunc* Petition of Pennsylvania-American Water Company for Limited Waiver of 52 Pa. Code § 56.11(a) and Related Tariff Provisions : : Docket No. P-2024-3051518

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**PRELIMINARY OBJECTIONS TO THE PETITION TO INTERVENE OF THE  
COALITION FOR AFFORDABLE UTILITY SERVICES  
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

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AND NOW COMES Pennsylvania-American Water Company (“PAWC”), pursuant to 52 Pa. Code § 5.101, to file these Preliminary Objections to the Petition to Intervene (the “Petition to Intervene”), filed on October 23, 2024 by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”). The Petition to Intervene alleges that CAUSE-PA has standing to intervene in this matter as a representative of its members, who are low-income customers that are directly, substantially, and immediately impacted by PAWC’s *Nunc Pro Tunc* Petition for Limited Waiver of 52 Pa. Code § 56.11(a) and Related Tariff Provisions (“Petition for Limited Waiver”).

PAWC respectfully requests that CAUSE-PA be directed to amend its Petition to Intervene to specifically explain how its members are directly, substantially and immediately impacted by PAWC’s request for a limited waiver of 52 Pa. Code § 56.11(a) and related tariff provisions. In addition, PAWC asks that impertinent material be stricken from CAUSE-PA’s Petition to Intervene (or at least be disregarded) to prevent extraneous issues from being introduced into this narrow, straightforward proceeding.

In support whereof, PAWC avers as follows:

## **I. BACKGROUND**

1. On October 3, 2024, PAWC filed the instant Petition for Limited Waiver.
2. On October 23, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention. Also on October 23, 2024, the OSBA’s counsel, Steven C. Gray, Esq., filed a Notice of Appearance.
3. On October 23, 2024, CAUSE-PA filed the Petition to Intervene.
4. On October 25, 2024, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention. The OCA is represented by Christy Appleby, Esq., and Barrett Sheridan, Esq.

## **II. LEGAL STANDARD**

5. The Commission’s regulations permit a party to file preliminary objections in response to a pleading for certain enumerated reasons, including but not limited to the inclusion of scandalous or impertinent matter and insufficient specificity. 52 Pa. Code § 5.101(a)(2) and (3).
6. Preliminary objections shall be raised at one time. 52 Pa. Code § 5.101(c).
7. When ruling on preliminary objections, the Presiding Officer must accept as true all well-pleaded allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwltth.*, 910 A.2d 775, 781 (Pa. Cmwltth. 2006) (citing *Dep’t of General Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwltth. 2005)). However, the Presiding Officer does not need to accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Public Welfare*, 927 A.2d 671, 673 (Pa. Cmwltth. 2007).

8. In order to sustain preliminary objections, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, 910 A.2d at 781.

**III. PRELIMINARY OBJECTION NO. 1: THE PETITION TO INTERVENE DOES NOT SPECIFICALLY EXPLAIN HOW CAUSE-PA'S MEMBERS WILL BE DIRECTLY, SUBSTANTIALLY AND IMMEDIATELY AFFECTED BY PAWC'S REQUEST FOR A LIMITED WAIVER OF 52 PA. CODE § 56.11(a) AND RELATED TARIFF PROVISIONS**

**A. The Petition for Limited Waiver**

9. The Commission's regulations permit a party to petition for the waiver of a regulation. The petition must set forth the interest of the petitioner in the subject matter, the specific regulation, the purpose of and the facts claimed to constitute the grounds for the waiver. 52 Pa. Code § 5.43(a).

10. PAWC's Petition for Limited Waiver requested a brief, retroactive waiver of (a) 52 Pa. Code § 56.11(a), (b) Rule 10.1 of PAWC's water tariff and (c) Rule 8 of PAWC's wastewater tariff.

11. 52 Pa. Code § 56.11(a) provides: "A public utility shall render a bill once every billing period<sup>1</sup> to every residential customer in accordance with approved rate schedules."

12. In pertinent part, Rule 10.1 of PAWC's water tariff provides: "The Company shall render a bill once every billing period to every Customer in accordance with approved rate schedules." This is the only portion of Rule 10.1 that PAWC asked the Commission to waive. Petition For Limited Waiver ¶ 4.

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<sup>1</sup> In pertinent part, 52 Pa. Code § 56.2 defines a "billing period" as "In the case of water and wastewater service, a billing period may be monthly, bimonthly or quarterly as provided in the tariff of the public utility. Customers shall be permitted to receive bills monthly and be notified of their rights thereto."

13. In pertinent part, Rule 8 of PAWC’s wastewater tariff provides: “**Billing Period:** The Company shall render a bill once every billing period to every Customer in accordance with approved rate schedules.” This is the only portion of Rule 8 that PAWC asked the Commission to waive. Petition for Limited Waiver ¶ 5.

14. PAWC requested that the Commission waive Section 56.11(a) and the associated tariff provisions for the period August 26, 2024 – September 12, 2024 only. Petition for Limited Waiver ¶ 18.

15. PAWC’s Petition for Limited Waiver averred that, between August 26, 2024 and September 12, 2024, upgrades to two billing systems caused a technical issue that resulted in a subset of customers not receiving a paper bill or notification of their electronic bill. Petition for Limited Waiver ¶ 7.

16. PAWC also averred that, when this issue was discovered, credits for any automatically assessed late payment charges and dunning locks to prevent collections activity, including any subsequent late payment charges, were placed on all impacted accounts through the end of 2024. Petition for Limited Waiver ¶ 10.

17. PAWC further averred that, for all impacted accounts, the Company’s next regularly scheduled bills have already been issued, or will issue, to the customers as normal. If the customer did not make a payment during the prior billing period, the bill will be for all water and/or wastewater usage from the last two billing periods. Customers will not be responsible to pay any late payment charges. Petition for Limited Waiver ¶ 11.

18. Additionally, PAWC averred that it contributed an additional \$100,000 to its H2O Help to Others Hardship Fund to assist any impacted customers with household incomes at or below 250% of federal poverty income guidelines. This Hardship Fund contribution is aimed to

assist low income customers who unexpectedly received a bill for two months of usage. Petition for Limited Waiver ¶ 22.

19. PAWC also averred that impacted customers from all customer classes may request a payment plan of up to 12 months. Impacted customers who did not pay their prior bill will receive a letter notifying them that this payment arrangement option is available. Petition for Limited Waiver ¶ 13.

20. Finally, PAWC averred that no customers will be negatively impacted by the requested limited waiver. Petition for Limited Waiver ¶ 19.

**B. The Petition to Intervene**

21. The Commission's regulation at 52 Pa. Code § 5.72(a) states:

A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

22. CAUSE-PA claims standing to represent its members' interests in this matter. *Tripps Park v. Pa. Pub. Util. Comm'n*, 415 A.2d 967, 970 (1980).

23. CAUSE-PA avers that it is an unincorporated association whose members are low and moderate income individuals. Petition to Intervene ¶¶ 5-6.

24. CAUSE-PA claims to be eligible to intervene pursuant to subsection 52 Pa. Code § 5.52(a)(2). CAUSE-PA claims that its members will be directly affected by the outcome of this proceeding and that the interests of its members are not adequately represented by other participants. Petition to Intervene ¶¶ 8, 9.

25. CAUSE-PA claims representational standing “given the likely substantial impact that PAWC’s billing lapse, as well as its requested waiver of billing regulations and proposed remedies in its Petition, will have on [PAWC’s] low and moderate income customers.” Petition to Intervene ¶ 8.

26. CAUSE-PA claims that some of its members have suffered, or may suffer, a direct, immediate and substantial injury to an interest as a result of this proceeding. The Petition to Intervene alleges:

Particularly, this proceeding could directly affect the ability of CAUSE-PA members to access and maintain affordable water and wastewater service to their home following PAWC’s billing lapse. As explained below, it is unclear at this stage whether and to what extent PAWC’s proposed remediation measures will fully address the harm caused to PAWC’s customers or the impact the proposal may have on the accessibility and availability of PAWC’s universal service programs.

Petition to Intervene ¶ 9.

27. CAUSE-PA asserts that the proposed contribution of \$100,000 to PAWC’s hardship fund is inadequate to address the financial hardship resulting from the billing lapse. Petition to Intervene ¶ 14.a.

28. CAUSE-PA questions the adequacy of the timeline for the dunning locks on affected accounts. It asserts that PAWC must take additional steps to ensure that impacted households are able to avoid service termination associated with PAWC’s billing errors after the dunning locks are removed. Petition to Intervene ¶ 14.b.

29. CAUSE-PA asserts that PAWC’s proposed 12-month payment agreements are inadequate for low income customers. CAUSE-PA asserts that additional steps are necessary to protect PAWC’s low income customers. Petition to Intervene ¶ 15.

30. CAUSE-PA is concerned about the impact and appropriateness of PAWC’s request for a retroactive waiver. CAUSE-PA states that it is not aware of any precedent for a retroactive

waiver and is “concerned about the precedent that granting such a request could create.” Petition to Intervene ¶ 16.

31. CAUSE-PA also notes that it is aware of reports of a data breach affecting PAWC’s customers and their billing procedures. CAUSE-PA alleges that this breach is likely to result in additional hardships for low income customers and will cause PAWC to request additional waivers. “Further investigation is needed to understand the full scope of issues impacting PAWC’s billing systems and other critical consumer protections.” Petition to Intervene ¶ 17.

**C. Argument: The Petition to Intervene Does Not Explain How CAUSE-PA’s Members Will be Directly, Substantially, and Immediately Impacted by a Limited Waiver of 52 Pa. Code § 56.11(a) and Associated Tariff Provisions**

32. A party may file a preliminary objection based on the lack of specificity of a prior pleading. 52 Pa. Code § 5.101(a)(3).

33. For CAUSE-PA to have representational standing, at least one of its members must have standing. *Parents United for Better Schools v. Sch. Dist. of Philadelphia*, 166 Pa. Cmwlth. 462, 646 A.2d 689, 692 (1994).

34. To have standing, a member of CAUSE-PA must have a substantial, direct and immediate interest in the litigation. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (1975).

The substantial interest requirement means that "there must be some discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." [*William Penn Parking Garage, Inc.*] at 195, 346 A.2d at 282. A direct interest "means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains." *Id.* Finally, the interest must "be `immediate' and `not a remote consequence of the judgment.'" *Id.* at 197, 346 A.2d at 283 (quoting *Keystone Raceway Corp. v. State Harness Racing Commission*, 405 Pa. 1, 7-8, 173 A.2d 97, 100 (1961)).

*Energy Cons. Council v. Pa. Pub. Util. Comm’n*, 995 A.2d 465, 476 (Pa. Cmwlth. 2010).

35. The Petition to Intervene fails to explain how any member of CAUSE-PA has a direct, substantial or immediate interest in PAWC's request for a waiver.

a. No member of CAUSE-PA appears to have a direct interest in PAWC's Petition for Limited Waiver. The applicable regulation and tariff provisions impose a requirement on PAWC. PAWC seeks a brief, retroactive waiver of this requirement. The Commission's decision on this request does not appear to harm any interest of CAUSE-PA members. In particular, the Commission's decision on this request will not affect the ability of CAUSE-PA members to access and maintain affordable water and wastewater service.

b. No member of CAUSE-PA appears to have a substantial interest in PAWC's Petition for Limited Waiver. The applicable regulation and tariff provisions impose a requirement on PAWC. PAWC seeks a brief, retroactive waiver of this requirement. CAUSE-PA's members do not appear to have an interest in the proceeding that surpasses the common interest in procuring obedience to the law. CAUSE-PA's concern about the appropriateness of a *nunc pro tunc* waiver of a regulation, and CAUSE-PA's concern about setting an undesirable precedent, are interests in having others comply with the law.

c. No member of CAUSE-PA appears to have an immediate interest in PAWC's Petition for Limited Waiver. The applicable regulation and tariff provisions impose a requirement on PAWC. PAWC seeks a brief, retroactive waiver of this requirement. The interest alleged by CAUSE-PA (the ability of CAUSE-PA members to access and maintain affordable water and wastewater service) appears to be remotely affected by the Commission's decision on whether to grant the requested limited waiver.

For all the above reasons, the Presiding Officer should direct CAUSE-PA to file an amended Petition to Intervene and Answer that specifically explains why any member of CAUSE-

PA has a direct, substantial, and immediate interest in PAWC's request for a brief, retroactive waiver of the regulation and tariff provisions requiring PAWC to render a bill once every billing period. CAUSE-PA should be required to plead how its identified member or members would suffer harm specifically if the Commission were to grant PAWC's waiver request.

**IV. PRELIMINARY OBJECTION NO. 2: IMPERTINENT MATTER SHOULD BE STRICKEN FROM CAUSE-PA'S PETITION TO INTERVENE (OR SHOULD BE DISREGARDED)**

36. A party may file a preliminary objection based on a party's inclusion of impertinent matter. 52 Pa. Code § 5.101(a)(2).

37. The Commission's regulations do not define the term "impertinent." Neither the Code nor the Statutory Construction Act define the term "impertinent." In *Cornwall Borough, Lebanon County Mun. Auth. v. Borough of Cornwall*, Docket Nos. C-2015-2475978 and P-2015-2475991 (Order Denying Preliminary Objections and Staying Proceedings issued Jun. 15, 2015) p. 9, Administrative Law Judge David A. Salapa used Black's Law Dictionary's definition of impertinent:

That which does not belong to a pleading, interrogatory, or other proceeding; out of place; superfluous; irrelevant. A term applied to matter not necessary to constitute the cause of action or ground of defense. Such matter may be stricken from the pleading.

38. Additionally, Administrative Law Judge Salapa held that impertinent matter need not be stricken but may be treated as surplus and ignored. *Id.* p. 10 (citing *Dept. of Env'tl. Resources v. Hartford Accident and Indemnity Co.*, 396 A.2d 885 (Pa. Cmwlth. 1979)). Judge Salapa denied the preliminary objection in that case but treated the challenged allegations as surplus and ignored them.

39. PAWC only requested a brief, retroactive waiver of the requirement that it issue bills once each billing period but CAUSE-PA's Petition to Intervene contains extensive impertinent matter, including:

- a. A request for an investigation to determine the "full scope of PAWC's billing issues." Petition to Intervene ¶¶ 13, 17;
- b. An assertion that "further investigation and review is needed to ensure that [PAWC's] proposed relief is adequate to protect low and moderate income customers from the negative impact of PAWC's billing lapse and to ensure that PAWC's proposed remediation does not create other unintended consequences to the accessibility and availability of PAWC's existing universal service programs." Petition to Intervene ¶ 14. *See also* Petition to Intervene ¶¶ 9, 13, and 15.
- c. A request for an investigation of a cyber-security incident occurring after the period of the requested limited waiver. Petition to Intervene ¶ 17.

40. CAUSE-PA's Notice to Intervene seeks to raise issues that are go well beyond PAWC's request for a brief, retroactive wavier of Section 56.11(a) and associated tariff provisions.

41. To prevent extraneous issues from being interjected into this proceeding, the impertinent matter in CAUSE-PA's should be stricken, or at least disregarded by the Presiding Officer and all parties to this proceeding.

WHEREFORE, for all the foregoing reasons, PAWC asks the Presiding Officer to strike, or at least disregard, the superfluous and irrelevant matter included in CAUSE-PA's Petition to Intervene.

**V. CONCLUSION AND REQUEST FOR RELIEF**

WHEREFORE, for all the reasons set forth above, Pennsylvania-American Water Company respectfully requests that the Presiding Officer:

- (1) GRANT these Preliminary Objections;
- (2) Direct CAUSE-PA to file an Amended Petition to Intervene that specifically explains how any CAUSE-PA member will be directly, substantially and immediately impacted by PAWC's Petition for Limited Water; and
- (3) Strike, or at least disregard, the impertinent matter in CAUSE-PA's Petition to Intervene.

Respectfully submitted,



David P. Zambito, Esquire (PA ID #80017)  
Jonathan P. Nase, Esquire (PA ID #44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: (717) 703-5892  
E-Mail: dzambito@cozen.com  
Email: jnase@cozen.com

Elizabeth Rose Triscari, Esq. (PA ID # 306921)  
Teresa Harrold, Esq. (PA ID # 311082)  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Telephone: (717) 550-1556  
E-mail: elizabeth.triscari@amwater.com  
E-mail: teresa.harrold@amwater.com

Counsel for *Pennsylvania-American Water Company*

Dated: November 12, 2024