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March 6, 2025

**VIA ELECTRONIC FILING**

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

**In re: Regulations Governing the Public Utility Commission's General Provisions, 52 Pa. Code Chapters 1, 3, and 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings) - Docket No. L-2023-3041347**

Dear Secretary Chiavetta:

Pursuant to your Secretarial Letter of January 13, 2025, enclosed please find Pennsylvania-American Water Company's Reply Comments on the above-referenced matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Harrold", is written over a horizontal line.

Teresa K. Harrold

cc: Tiffany Tran, Law Bureau (*via electronic mail*)  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Regulations Governing the Public Utility** :  
**Commission’s General Provisions, 52 Pa. Code** :  
**Chapters 1, 3, and 5 (relating to Rules of** : **Docket No. L-2023-3041347**  
**Administrative Practice and Procedure; Special** :  
**Provisions; and Formal Proceedings)** :  
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**CERTIFICATE OF SERVICE**

I hereby certify that I this day serving the above-referenced Reply Comments 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).

**SERVED VIA ELECTRONIC ON MARCH 6, 2025**

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Respectfully submitted,



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**BEFORE THE  
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Regulations Governing the Public Utility :  
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Provisions; and Formal Proceedings) :

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**REPLY COMMENTS OF PENNSYLVANIA-AMERICAN WATER COMPANY**

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Pennsylvania-American Water Company (“PAWC” or the “Company”) submits the following Reply Comments in response to issues raised by stakeholders in their comments regarding the Clarified Notice of Proposed Rulemaking Order (“NOPR”) entered by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) on August 22, 2024, at the above-referenced docket and published in the Pennsylvania Bulletin on December 7, 2024. Comments were submitted in this proceeding by several parties including the Company, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordability Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”)<sup>1</sup> and Tenant Union Representative Network (“TURN”), the Energy Association of Pennsylvania (“EAP”), FirstEnergy Pennsylvania, PPL Electric Utilities Corporation, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, West Penn Power Industrial Intervenors, and Industrial Energy Consumers of Pennsylvania. In addition, National Fuel Gas Distribution Company,

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<sup>1</sup> CAUSE-PA’s affiliate, the Pennsylvania Utility Law Project, also submitted additional joint comments along with the following organizations: AIDS Resource, Centre Helps, Community Action Association of Pennsylvania, Community Justice Project, Community Legal Services of Philadelphia, Congolese Community of Scranton, Conservation Voters of Pennsylvania, Face to Face, Housing Alliance of Pennsylvania, Legal Clinic for the Disabled, Pennsylvania Legal Aid Network, POWER Interfaith, Public Interest Law Center, SeniorLAW Center, and United Neighborhood Center of NEPA.

Peoples Natural Gas Company, Columbia Gas of Pennsylvania, Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company, and Valley Energy all submitted letters in lieu of formal comments. In the NOPR, the Commission proposes extensive changes to Sections 1, 3, and 5 of its regulations. The Company's decision not to address specific changes in the NOPR or stakeholder comments should not be interpreted as the Company's support for such changes or comments.

## **I. REPLY COMMENTS**

### **52 Pa. Code §§ 3.2, 3.4, 3.6, and 5.12**

In Sections 3.2, 3.4, and 3.6, as well as in Section 5.12, the Commission proposes to modify its regulations to require that parties serve the statutory advocates, *i.e.*, the OCA, the OSBA, and the Bureau of Investigation and Enforcement ("I&E") with all petitions for emergency relief and applications. In comments, CAUSE-PA and TURN propose to expand this service list to include both the statutory advocates and all parties to the utility's last base rate proceeding. The Company opposes this CAUSE-PA/TURN proposal. CAUSE-PA and TURN allege that parties to a utility's last base rate case are interested in the utility's rates and terms of service, and therefore, they likely would be interested in any petitions for emergency relief and applications submitted by the utilities. PAWC disagrees that the majority of parties to its last rate case would be interested or impacted by its numerous filings. As part of PAWC's last rate case, dozens of residential customers were considered parties of the rate case because they filed formal complaints in the proceeding. Most residential customers who file formal complaints in base rate proceedings are only interested in requesting that the Commission minimize their rate increase. Such customers have absolutely no interest in receiving copies of the many applications filed by the Company at the Commission every year. Applications are often voluminous at hundreds or sometimes thousands of pages in

length. The Company predicts that many customers would strongly oppose PAWC serving them with lengthy documents either in paper or electronic format against their will in proceedings they never asked to participate in. The costs of serving PAWC's filings on dozens of additional unimpacted parties likewise would be unreasonable.

CAUSE-PA and TURN also fail to recognize that the Commission's regulations already provide for service on impacted parties. The Commission's regulations clearly state that petitions for emergency orders must be served "upon the persons directly affected by the application."<sup>2</sup> In addition, all applications are published in the Pennsylvania Bulletin and local newspapers, as well as directly served on parties affected by the application.<sup>3</sup> This language ensures that impacted parties are served with emergency petitions and applications and provides extensive notice to the public regarding application filings. Further expansion of the service list of these proceedings to include all parties from a Company's last rate case is unnecessary and unreasonably costly.

**52 Pa. Code § 5.231(a)**

The NOPR does not include any proposed changes to Section 5.231(a); however, Commissioner Barrow issued a statement requesting comments regarding whether the Commission's policy favoring settlements should be preserved. In PAWC's experience, a policy promoting settlements is positive because it encourages parties to reach a collaborative resolution while reducing the time and resources associated with litigating a matter to completion. While settlements do not typically represent the ideal outcome for either party, they often result in an outcome that is acceptable for both parties, which could not be achieved through litigation. By way of example, many residential customers file formal complaints in which they are seeking payment arrangements. The Company has significantly more flexibility to offer additional and

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<sup>2</sup> 52 Pa. Code § 3.2.

<sup>3</sup> *Id.* at § 5.14.

lengthier payment arrangements than the Commission does under the recently expired Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. In general, customers will receive a more favorable payment arrangement negotiating directly with a utility through a settlement process than fully litigating their complaint. Accordingly, PAWC supports preserving Section 5.231(a) of the Commission's regulations as part of this proceeding.

In OCA's comments, the OCA proposes the following additional italicized language for Section 5.231(a): "It is the policy of the Commission to encourage settlements, *only if the provisions which arise out of the settlement process outweigh the public interest in further development of the factual record and legal positions of the parties.*" The OCA's revision to Section 5.231(a) should be rejected because it would create an impossible standard for the Commission to meet. The Commission and its Administrative Law Judges ("ALJs") have no way of knowing if a settlement would outweigh advantages for one party or the other in further developing the factual record and legal positions of the parties. A settlement often occurs before a factual record is fully developed at an evidentiary hearing and nearly always before parties present their legal positions in briefs. The OCA's proposed language also presumes that "further development of the factual record and legal positions of the parties" is in the public interest when a settlement of the matter could result in a much more just and reasonable outcome for the parties. For these reasons, the OCA's proposed revision to Section 5.231(a) should be rejected by the PUC.

**52 Pa. Code §§ 5.321 et seq.**

The Commission is not proposing any changes to its discovery deadlines in the NOPR. However, in comments, the OCA proposes significant modifications to the discovery deadlines in the Commission's regulations based on what it considers the "default" discovery deadlines in matters involving the OCA. The OCA's proposed discovery rules would shrink deadlines across

the board, *i.e.*, reducing discovery due dates from 20 to 10 days of receipt of discovery, reducing objection deadlines from 10 to 5 days of receipt of discovery, and reducing motions to compel deadlines from 10 to 3 days of receipt of objections. The OCA's proposed changes to discovery deadlines should be rejected.

The current discovery deadlines within the Commission's regulations are reasonable and already quite aggressive. A 20-day discovery deadline is 10 days shorter than the 30-day discovery deadline within the Pennsylvania Rules of Civil Procedure.<sup>4</sup> A 10-day objections deadline is 20 days shorter than the objections deadline within the Pennsylvania Rules of Civil Procedure.<sup>5</sup> Other administrative agencies, such as the Environmental Hearing Board, simply incorporate the discovery deadlines from the Pennsylvania Rules of Civil Procedure into their procedures, further demonstrating that the Commission's current deadlines require significantly speedier discovery turnarounds than their counterparts.<sup>6</sup>

Although utilities have agreed to adopt the OCA's shortened discovery deadlines in certain proceedings, their decision to cooperate with the OCA and avoid prehearing disputes should not be interpreted as support for making the OCA's proposed deadlines required for all proceedings. The OCA may be capable of meeting those time constraints because its organization focuses entirely on litigating utility matters. However, the OCA is not a party in the majority of PAWC's matters before the Commission. Most other parties who appear before the Commission require additional time because utility litigation is not their primary focus. Residential customers who file formal complaints manage their complaint filings in their spare time. Utilities and their commercial customers are primarily focused on maintaining their operations and should not be

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<sup>4</sup> 231 Pa. Code r. 4009.12.

<sup>5</sup> *Id.*

<sup>6</sup> 25 Pa. Code § 1021.102(a).

expected to arbitrarily rush to prepare discovery responses. The Commission should reject the OCA's proposed changes and maintain the current discovery deadlines in its regulations. Discovery modifications have historically and will continue to be negotiated by the parties on a case-by-case basis, as appropriate.

**52 Pa. Code § 5.331(c)**

The Commission proposes to modify Section 5.331(c) to state that “once a protest or adverse pleading is filed with the Commission, staff data requests are deemed withdrawn.” This change is reasonable and reflects current practice before the Commission. Where a filing is uncontested, Commission staff issues data requests to evaluate the filing. When a filing is protested, however, the case is moved to the Office of Administrative Law Judge (“OALJ”) to manage the litigation process. The OCA opposes this change because this language inadvertently could result in the withdrawal of I&E's data requests because of a subsequently filed protest. PAWC agrees that the following minor changes in bold would eliminate any confusion within Section 5.331(c): “**Once a matter is transferred to the Office of Administrative Law Judge, previous** staff data requests are deemed withdrawn.” Prior to the transfer of a matter to the OALJ, the only data requests from PUC staff are from the Bureau of Technical Utility Services (“TUS”) or other non-prosecutory branches of the PUC. I&E does not begin to issue discovery in any proceeding until the matter is transferred to the OALJ.

The OCA further opposes the PUC's proposed change to Section 5.331(c) on the basis that data requests from TUS during Section 1329 application proceedings should not be automatically withdrawn if parties file protests or adverse pleadings when the applications are not considered complete yet; TUS data requests are necessary for TUS to confirm that an application is complete. PAWC's proposed language change in bold above resolves this concern as well.

While it is accurate that the OCA has filed protests in Section 1329 proceedings prior to applications being accepted for filing by TUS and the transfer of the matter to the OALJ, it is procedurally inappropriate and should not result in changes to the Commission's proposed regulations. The Section 1329 application process includes several weeks or months during which the application is not yet deemed accepted by the PUC while TUS reviews it for completeness and compliance with Section 1329 of the Public Utility Code and the Commission's implementation orders at Docket No. M-2016-2543193. During this TUS review period, the application remains with TUS and is not subject to litigation. Once TUS conditionally accepts the application, the Commission sets a defined time period for parties to intervene and/or protest the application. Litigation activities such as discovery, written testimony exchange, and hearings, do not begin until after this time period ends, the application is officially accepted by the PUC, and the matter is transferred to the OALJ. Accordingly, PAWC's proposed language change within Section 5.331(c) defining transfer of a matter to the OALJ as the event that would trigger withdrawal of staff data requests is consistent with the Section 1329 application process.

**OCA's Proposed 52 Pa. Code § 5.110 and § 5.111**

The OCA proposes that the Commission adopt two new regulations imposing specific timing requirements on utilities and the Commission for both base rate and non-base rate proceedings with statutory deadlines for a Commission decision. In base rate proceedings, utilities would be required to file their cases on the date of the month that would result in an end of the nine-month suspension period that falls eight to ten calendar days after the Commission's future scheduled public meeting dates. In non-rate case matters, the Commission would be required to schedule special public meetings if there is no public meeting scheduled eight to ten calendar days

before the end of the suspension period. The purpose of this change is to maximize parties' litigation time in light of the statutory deadlines for a Commission order.

PAWC opposes OCA's proposed sections 5.110 and 5.111 because they impose prescriptive timing requirements on the Commission and parties that should instead be determined on a case-by-case basis by the assigned ALJ. When establishing the procedural schedule for both base rate and non-base rate proceedings, ALJs always recognize the importance of maximizing litigation time and seek feedback from all parties to develop a schedule that balances the needs of everyone. In order to accomplish this, ALJs need as much flexibility as possible. OCA's proposed regulations would impose additional timing restrictions on the ALJ that would unnecessarily complicate the schedule adoption process.

In addition, the OCA's proposal that the Commission should be required to schedule special public meetings to ensure that all final orders are issued within eight to ten days of the end of a suspension period is unreasonably restrictive. This proposed regulation could result in the Commission potentially needing to schedule several meetings in close proximity to accommodate the timing of different utility filings. Utilities are unable to coordinate the timing of their filings among each other because information related to upcoming significant utility filings is often considered material nonpublic information that cannot be disclosed under Securities and Exchange Commission rules.

The better solution to address the timing concerns raised by the OCA is for the Commission and parties to use the flexibility already encompassed within the Commission's regulations to adopt procedural schedules that maximize the litigation time for parties while preserving a reasonable period for the Commission to prepare its final order. The adoption of prescriptive timing requirements within the Commission's regulations is more likely to add inflexibility into

the procedural schedule setting process and result in unnecessary scheduling challenges for the Commission. Accordingly, the OCA's proposed sections 5.110 and 5.111 should not be adopted.

## II. CONCLUSION

PAWC appreciates the opportunity to submit these Reply Comments to the Commission regarding its proposed regulations. PAWC looks forward to continuing to work with the Commission and other stakeholders throughout this rulemaking process.

Respectfully submitted,



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