

COMMONWEALTH OF PENNSYLVANIA



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October 29, 2025

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
The York Water Company

Docket Nos. R-2025-3053442 (W)
R-2025-3053573 (WW)

Dear Secretary Homsher:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectively,

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Enclosures

cc: Administrative Law Judge John M. Coogan (jcoogan@pa.gov)
Administrative Law Judge Emily A. Farren (efarren@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2025-3053442 (W)
	:	R-2025-3053573 (WW)
The York Water Company	:	
	:	

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 29th day of October, 2025

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) joins in the partial settlement between York Water Company (York Water or Company), the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E), and the Office of Small Business Advocate (OSBA). All issues are resolved between the settling parties except allocation of the agreed-upon revenue increase for York Water's water division contained in the Settlement. This question was reserved for briefing by the parties and for a final decision by the Commission. The OCA now submits this Main Brief.

Attached to this Brief as Appendix A are the OCA's proposed Findings of Fact. Appendix B lists the OCA's proposed Conclusions of Law. Appendix C includes OCA's proposed ordering paragraphs. Appendix D contains a list of the OCA's Evidence that was admitted into the evidentiary record in this case.

A. Description of the Office of Consumer Advocate

The OCA is a statutory advocate with the authority and duty to represent the interest of consumers as a party before the Commission in public utility rate requests.¹ The OCA's interest in this case is to ensure that consumers who ultimately pay the revenue requirement to the Company are paying no more than is necessary to ensure that service remains adequate, reliable, and safe while allowing the Company to have the opportunity to recover its prudently incurred costs and earn a fair rate of return on its investments.

B. Procedural History

On May 30, 2025, the Company filed Supplement No. 165 to Tariff Water-Pa. P.U.C. No. 14 and Supplement No. 26 to Tariff Wastewater-Pa. P.U.C. No. 1 with the Commission to become

¹ 71 P.S. § 309-4.

effective on August 1, 2025. The Company's proposed tariffs would increase the Company's total annual operating revenues by approximately \$20.3 million for water and \$3.8 million for wastewater, or \$24.1 million overall, based on a fully projected future test year (FPFTY) ending February 28, 2027.

On June 11, 2025, the OCA filed its Formal Complaint and Public Statement.

On July 10, 2025, the Commission entered Orders at the captioned dockets, suspending the tariffs by operation of law until March 1, 2026, and instituting an investigation to determine the lawfulness, justness, and reasonableness of the proposed and existing rates, rules, and regulations, and assigning the rate filings to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of hearings as may be necessary culminating in the issuance of a recommended decision. The proceeding was assigned to Administrative Law Judges (ALJs) John M. Coogan and Emily A. Farren as presiding officers.

Fifteen consumers have filed formal complaints to date. There were four Public Input Hearings at which 48 individuals testified under oath, an overwhelming majority of them in opposition to the Company's rate relief request.² ALJs Coogan and Farren held Public Input Hearings, as follows:

- On August 26, 2025, at 1:00 p.m. and 6:00 p.m. in York, PA.
- On August 27, 2025, at 1:00 p.m. and 6:00 p.m. telephonically.

Consistent with the procedural schedule issued by the ALJs, the OCA served on the ALJs and the parties its written Direct, Supplemental Direct, Rebuttal, and Surrebuttal Testimonies on August 22, 2025, September 19, 2025, and October 6, 2025, respectively, in which the OCA opposed and/or recommended adjustments to the Company's requests. The testimony served by

² See OCA St. 6S.

the OCA in this proceeding was submitted by OCA witnesses Dante Mugrace (OCA St. 1, 1SR), David Garrett (OCA St. 2, 2SR), James Garren (OCA St. 3, 3SR), Jerome Mierzwa (OCA St. 4, 4R, 4SR), Barbara Alexander (OCA St. 5, 5SR), and LeeAnn Wise (OCA St. 6S).

On October 14, 2025, ALJs Coogan and Farren held an evidentiary hearing, during which, by stipulation of counsel, the ALJs admitted into the record pre-served testimony and exhibits identified by the Company, the OCA, I&E, and the OSBA.

On October 15, 2025, the ALJs issued a Briefing and Settlement Order establishing deadlines for the filing of briefs, Joint Petition for Settlement, Statements in Support of Settlement, and comments or objections to the Settlement. In accordance with the Briefing Order, the OCA now submits this Main Brief in opposition to York Water Company's proposed revenue allocation of the Settlement revenue increase for its water division.

On October 23, 2025, the Company informed the ALJs that the parties reached a Partial Settlement. The one issue reserved for litigation is allocation of the Company's water revenue increase. The parties resolved all other issues in this case through the Partial Settlement.

C. Legal Standards

1. Utility Monopoly Regulation

York Water is a water and wastewater utility with an exclusive monopoly franchise. Customers who reside in its certificated service territory have no choice; if they want water or wastewater service, they must buy it from York. Utility regulation stems from the state's police power to protect the health, safety, morals, and general welfare of their citizens. States have the power to regulate the use of private property and the rates charged by certain private companies in industries "clothed with a public interest."³ Utility regulation is an important, traditional state

³ *Munn v. Illinois*, 94 U.S. 113, 126 (1877).

police power.⁴ The Pennsylvania General Assembly, through the Public Utility Code, properly exercises state police power to regulate the health, safety, morals, and general welfare of citizens by regulating monopoly utility service.⁵ The Commission’s comprehensive authority under the Public Utility Code constitutionally exercises this power to oversee and regulate jurisdictional public utilities.⁶

2. Burden of Proof

The Company bears the full burden of proof to establish the justness and reasonableness of every element of its requested rate increase.⁷ The evidence necessary to meet that burden must be substantial, legally credible, and cannot be a mere “suspicion” or “scintilla” of evidence.⁸

The party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position.⁹ Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.”¹⁰ The burden of proof is a preponderance of the evidence.¹¹

⁴ *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983).

⁵ *Relief Elec. Light, Heat & Power Co’s. Petition*, 63 Pa. Super. 1, 6-11, 1916 Pa. Super. LEXIS 89 (1916).

⁶ *Jenkins Twp. v. Pub. Serv. Comm’n*, 65 Pa. Super. 122, 1916 Pa. Super. LEXIS 30, **15-16 (1916) (“The authority which the commission seeks to exercise in this case is clearly the exercise of the police power inherent in our State as delegated to the commission by the provisions of the Public Service Company Law,” which the Public Utility Law of 1937 and the Public Utility Code of 1978 successively replaced). *See also* Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice*, 87 (Pub. Utils. Reports, Inc., 3rd ed. 1993); James H. Booser, *The Constitutional Limitations on Public Utility Regulation*, 67 Dick. L. Rev. 363, 364 (1963), available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol67/iss4/3> (last visited Mar. 21, 2024).

⁷ 66 Pa. C.S. § 315(a).

⁸ *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980); *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) (*Lansberry*).

⁹ *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983) (*Burleson*).

¹⁰ *Id.*

¹¹ *Lansberry*, 578 A.2d at 602.

The utility must show that “every component of its rate request” meets statutory requirements.¹² This burden remain with the utility “throughout the course of the rate proceeding.”¹³ Other parties proposing adjustments to the filing, unlike utilities, do not have this burden.¹⁴

Thus, the OCA (or any challenger) need not prove that the Company’s proposed rates are unjust, unreasonable, or against the public interest.¹⁵ While subtle, this critical distinction shows that parties opposing a utility in a rate proceeding need only to show a deficiency in the utility’s proof, not to meet any affirmative burden themselves. In other words, to prevail, the OCA need only show *how* the Company failed to meet its burden of proof.

A public utility may elect to use a future test year (FTY) or a fully projected future test year (FPFTY) “in discharging its burden of proof.”¹⁶ However, the utility must provide evidence to support all estimates of increased costs in its FTY and FPFTY.¹⁷ The Public Utility Code provides:

Whenever a utility utilizes a future test year or a fully projected future test year in any rate proceeding and such future test year or a fully projected test year forms a substantive basis for the final rate determination of the commission, *the utility shall provide*, as specified by the commission in its final order, *appropriate data evidencing the accuracy of the estimates contained in the future test year or a fully projected future test year*, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data.¹⁸

¹² *Pa. PUC v. Pa.-American Water Co.*, 231 P.U.R.4th 277, 2004 Pa. PUC LEXIS 29, *16-18 (Jan. 29, 2004) (*PAWC 2004*) (citing *Berner v. Pa. PUC*, 116 A.2d 738 (Pa. 1955) (*Berner*)).

¹³ *Id.*

¹⁴ *Id.*; *Berner*, 116 A.2d at 744. The Commission has recognized this in its rate determinations. See *Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983); see also *University of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Pa. PUC v. PPL Elec. Utils. Corp.*, 2004 Pa. PUC LEXIS 40 (Order entered Dec. 22, 2004).

¹⁵ See *id.*

¹⁶ 66 Pa. C.S. § 315(e).

¹⁷ *Id.*

¹⁸ *Id.* (emphasis added).

If the utility fails to prove that the projections in its FTY or FPFTY are accurate, the Commission should reject those projections and may adjust the public utility’s revenue requirement increase request to remove the inaccurate projections.¹⁹

3. Just and Reasonable and Not Unduly Discriminatory Rates

A public utility’s rates must be just, reasonable, and conformed to regulations and orders of the Commission.²⁰ A public utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.”²¹ A utility’s cost of providing service guides the ratemaking process.²² This process also considers quality of service, rate gradualism, and rate affordability.²³

The Commission “has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.”²⁴ Statutory language does not confine the Commission’s discretion and policymaking authority to “an absolute or mathematical formulation.”²⁵ Instead, the Commission’s discretion to determine whether a requested rate is just and reasonable includes the “power to make and apply policy” concerning the appropriate balance between rates charged to consumers and returns allowed to utility investors.²⁶

There is ample authority for the proposition that the power to fix “just and reasonable” rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term “just and reasonable” *was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation* but rather to confer upon the regulatory body

¹⁹ *See id.*

²⁰ 66 Pa. C.S. § 1301(a).

²¹ *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*Lancaster 2002*).

²² *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (*Lloyd*).

²³ *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Order Feb. 19, 2021) (*Columbia 2021*), at 46-47 (citing 66 Pa. C.S. §§ 523, 526(a)); and then *Lloyd* at 1020 and *Pa. PUC v. Twin Lakes Util., Inc.*, Docket No. R-2019-3010958 (Order Mar. 26, 2020) at 48, 80). Available at <https://www.puc.pa.gov/pcdocs/1693880.docx>.

²⁴ *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky 1996*).

²⁵ *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995) (*Popowsky 1995*).

²⁶ *Id.*

the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.²⁷

A utility's cost of providing service guides the ratemaking process.²⁸ Additional important ratemaking concerns include quality of service, rate gradualism, and rate affordability.²⁹

Additionally, rates must not be unduly discriminatory among customer groups.³⁰ The Commission has discretion to determine reasonable classification of service of rates as may be justified "by a variety of considerations including the quantity of service used, the nature of the use, the time of the use, the pattern of the use, differences of conditions of service or cost of service."³¹

4. Reasonable Opportunity to Earn a Fair Rate of Return

A public utility is entitled to no more than a reasonable opportunity to earn a fair rate of return on its investments dedicated to public service.³² The United States Supreme Court held:

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to raise the money necessary for the proper discharge of public duties.³³

The allowed rate of return should reflect:

[A] return on the value of the [utility's] property which it employs for the convenience of the public equal to that being made at the same time on investments in other business undertakings which are attended by corresponding risks and uncertainties.³⁴

²⁷ *Id.* (citations omitted) (emphasis added).

²⁸ *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (*Lloyd*).

²⁹ *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Order Feb. 19, 2021) (*Columbia 2020*), at 46-47 (citing 66 Pa. C.S. §§ 523, 526(a)) (citing also *Lloyd* at 1020 and *Pa. PUC v. Twin Lakes Util., Inc.*, Docket No. R-2019-3010958 (Order Mar. 26, 2020) at 48, 80) (available at <https://www.puc.pa.gov/pedocs/1693880.docx>).

³⁰ 66 Pa. C.S. § 1304.

³¹ *Zucker v. Pa. PUC*, 402 A.2d 1377, 1382 (Pa. Cmwlth. 1979) (*Zucker*).

³² *Pennsylvania Gas & Water Co. v. Pa. PUC*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975) (citations omitted).

³³ *Bluefield Water Works and Improvement Co. v. Public Serv. Comm'n of W.Va.*, 262 U.S. 679, 692-93 (1923) (*Bluefield*).

³⁴ *Bluefield*, 262 U.S. at 692.

However, a fair return for public utility service is not equivalent to “profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.”³⁵ A fair rate of return “should be commensurate with returns on investments in other enterprises having corresponding risks” while being sufficient “to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.”³⁶ The Supreme Court noted, however, that:

The rate-making process under the Act, i.e., the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and consumer interests. Thus we stated...that *regulation does not insure that the business shall produce net revenues.*³⁷

Consumers cannot readily negotiate with a utility and must “rely upon” the Commission to provide “a complete, permanent, and effective bond of protection from excessive rates and charges” of the public utility.³⁸ The Commission’s “responsibilities include the protection of future, as well as present, consumer interests.”³⁹ Rates adopted by the Commission that are within a “zone of reasonableness” can withstand constitutional scrutiny.⁴⁰

Cost of capital analyses are generally accepted by the Commission as a basis for determining a fair rate of return under the “just and reasonable” standard of the Code. In *PSW 1989*, the Commission defined an appropriate rate of return as:

[T]he amount of money a utility earns, over and above operating expenses, depreciation expense, and taxes, expressed as a percentage of the legally established net valuation of utility property, the rate base. Included in the “return” are interest on long-term debt, dividends on preferred stock, and earnings on common equity. In other words, the return is the money earned from operations which is available for distribution among the various classes of contributors of money capital.⁴¹

³⁵ *Id.* at 692-693.

³⁶ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*).

³⁷ *Id.* (emphasis added) (internal quotations omitted); see also *Pa. PUC v. Phila. Suburban Water Co.*, 71 Pa. PUC 593, 623 (1989) (*PSW 1989*) (citing *Pittsburgh v. Pa. PUC*, 69 A.2d 844 (Pa. Super Ct. 1949)); see also *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310, 312 (1989) (*Duquesne Light*), *aff’g Barasch v. Pa. PUC*, 532 A.2d 325 (Pa. 1987).

³⁸ *Permian Basin Area Rate Cases*, 390 U.S. 747, 794-95 (1968) (*Permian Basin*) (citing *Atlantic Ref. Co. v. Pub. Serv. Comm’n*, 360 U.S. 378, 388 (1981)).

³⁹ *Permian Basin*, 390 U.S. at 797.

⁴⁰ *Id.* at 797.

⁴¹ *PSW 1989* at 622-23 (quoting Paul J. Garfield & Wallace F. Lovejoy, *Public Utility Economics*, 116 (1964)).

Additionally, the Commission stated:

A fair rate of return for a public utility, however, is not a matter which is to be determined by the application of a mathematical formula. It requires the exercise of informed judgment based upon an evaluation of the particular facts presented in each proceeding. There is no one precise answer to the question as to what constitutes the proper rate of return. The interests of the Company and its investors are to be considered along with those of the customers, *all to the end of assuring adequate service to the public at the least cost*, while at the same time maintaining the financial integrity of the utility.⁴²

5. Due Consideration to the Interest of Consumers

As a matter of law, an increase in base rates involves a substantial property right, entitling ratepayers to notice and procedural due process.⁴³ Given that a utility's general rate increase request will substantially affect the interests of consumers, the Commission must "consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers."⁴⁴

II. SUMMARY OF ARGUMENT

York Water did not meet its burden of proof to support the adoption of its cost of service study (COSS) or revenue allocation proposal. The COSS utilized outdated information as inputs into the COSS which produced unreasonable results of the COSS, and the Company relied on the unreasonable results of its COSS to develop its proposed revenue allocation. The Commission should reject York Water's COSS and adopt the OCA's alternative COSS, which is fully substantiated by the credible witness testimony of OCA witness Jerome D. Mierzwa. The Company used data from a customer demand study from 1976 and 1977 in its COSS. The demand study is not an accurate reflection of how York Water's customer classes use its system in the

⁴² *Pa. PUC v. Pa. Power Co.*, 55 Pa. PUC 552, 579 (1982) (*Pa. Power*) (emphasis added); *see also Pa. PUC v. Nat'l Fuel Gas Dist. Corp.*, 73 Pa. PUC 552, 603-05 (1990) (*NFGD 1990*).

⁴³ *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1068 (Pa. Cmwlth. 2018) (*McCloskey 2018*) (citing *Barasch v. Pa. PUC*, 546 A.2d 1296, 1305-06 (Pa. Cmwlth. 1988) (*Barasch 1988*); and then U.S. Const. amend. XIV, § 1).

⁴⁴ 71 P.S. § 309-5.

present day. York Water also utilized systemwide maximum day and hour demand data from the last 15 to 20 years, which is stale and no longer representative of how its customers utilize its water system assets. Based on the faulty study, York assigned costs to its residential customers in excess of the cost to serve those customers. This means residential customers are not only paying more than is reflected in how they use York's system, they are also subsidizing customers in other classes. OCA witness Mierzwa's alternative cost-of-service study and revenue allocation are rooted in Commission precedent and guiding policies, and they would result in just and reasonable rates and move all classes toward their indicated cost of service.

Accordingly, the Commission should conclude that York failed to meet its burden of proof to support the adoption of its COSS or proposed revenue allocation, that the OCA met its burden of production in offering an alternative COSS that will result in just and reasonable rates, and the Commission should therefore adopt the OCA's alternative COSS.

III. ARGUMENT

A. Overall Position Rate Increase

The OCA conducted a thorough investigation into York Water's request for a general increase in annual water revenues of \$20,311,978 (28.9%) and in annual wastewater revenues of \$3,857,507 (44.5%). This increase would be paid for by 73,089 water customers and 6,682 wastewater customers, throughout parts of York, Adams, Franklin, and Lancaster Counties. York Water uses a fully projected future test year ending February 28, 2027.

If the Company's increase were granted as requested, the monthly water bill for residential gravity customers using the noticed level of usage of 4,383 gallons per month would increase from \$47.78 to \$58.26 per month, or by 21.9%. The water bill for residential repumped customers using the noticed level of usage of 3,672 gallons per month would increase from \$56.48 to \$72.26 per

month, or by 27.9%. These bill increases include an increase to the residential customer charge of \$7.60, from \$17.25 to \$24.85.

According to the customer notices included in York Water’s filing, the typical wastewater bill for residential customers would increase as follows:

Area	Usage	Present Rate	Proposed Rate	Increase (\$)	Increase (%)
Asbury Pointe Subdivision, Felton Borough, Letterkenny Township	Per month per dwelling unit	\$86.90	\$93.60	\$6.70	7.7%
East Prospect Borough and Lower Windsor Area	4,800 gallons per month	\$92.95	\$127.67	\$34.72	37.4%
Jacobus Borough	4,638 gallons per month	\$91.73	\$125.60	\$33.87	36.9%
Monaghan Township	Per month per dwelling unit	\$44.20	\$82.74	\$38.54	87.2%
Shrewsbury and Springfield Township Area	4,276 gallons per month	\$41.38	\$71.29	\$29.91	72.3%
Straban Township Area	4,519 gallons per month	\$90.83	\$124.07	\$33.24	36.6%
Washington Township	4,658 gallons per month	\$43.29	\$75.76	\$32.47	75.8%
West York Borough	Per month per dwelling unit	\$60.00	\$93.60	\$33.60	56%
West Manheim Township	4,011 gallons per month	\$89.84	\$132.56	\$42.72	47.6%
York Haven Borough and Newberry Township Area	Per month per dwelling unit	\$50.00	\$93.60	\$43.60	87.2%

Under the terms of the Settlement, the Company will be permitted to increase its annual operating revenues for its water division by \$16.0 million, or 23.4%. This reflects a decrease from the Company’s revenue increase request of \$3.9 million, or 19.6%. The Settlement would permit York Water to increase its annual operating revenues for its wastewater division by \$2.85 million, or 32.9%. This reflects a decrease from the Company’s revenue increase request of \$1.05 million, or 26.9%.

The Settlement includes critical protections for York Water’s customers, as fully described in the OCA’s Statement in Support. Namely, York Water withdrew its request, with prejudice, for alternative ratemaking treatment for its acquisition of the York Haven Sewer Authority wastewater system assets and for 50% of the requested alternative ratemaking treatment for its acquisition of the Letterkenny Industrial Development Authority and Franklin County General Authority wastewater system assets.⁴⁵ York Water also agreed to increase its customer charge for residential water customers to \$19.75, an increase of \$2.50 over the current fixed customer charge, instead of the \$7.60 increase proposed in its filing.⁴⁶ The Settling Parties were also able to agree to a reasonable allocation of the revenue increase for the Company’s wastewater division and resulting rate design.⁴⁷ The Settlement provides for improvements to the Company’s proposed low-income programming as well as to its termination procedures, bill format, and dispute log.⁴⁸ York Water committed to improving its call center performance and conducting a root cause analysis of customer disputes.⁴⁹

However, the parties were unable to agree to the appropriate allocation of York Water’s revenue increase for its water division. As set forth fully below, the OCA’s proposed modifications to the Company’s as-filed COSS are necessary to ensure that the revenue allocation for the Settlement revenue increase for York Water’s water operations is consistent with the cost to serve the Company’s customers. The stale usage data relied upon by the Company in the preparation of its COSS does not accurately indicate cost causation on the Company’s system. Determining the appropriate cost of service by class is a forward-looking exercise which allocates to future

⁴⁵ Settlement ¶¶ 39-40.

⁴⁶ Settlement ¶ 46.

⁴⁷ Settlement ¶ 47.

⁴⁸ Settlement ¶¶ 52-60.

⁴⁹ Settlement ¶ 61.

beneficiaries their share of the costs incurred to provide them with service.⁵⁰ York Water's COSS and resulting revenue allocation proposal deviate from this ratemaking norm and, therefore, should be given little weight. Instead, the OCA's modifications to the Company's COSS should be used for the purposes of revenue allocation because they more accurately reflect how York Water will incur costs to provide service on a forward-looking basis.

As a result, the OCA requests that the Commission approve the Settlement as it is in the public interest and is supported by substantial evidence and allocate the agreed-upon rate increase for the Company's water operations in accordance with the recommendation of OCA witness Mierzwa.

B. Revenue Allocation

1. Introduction

OCA witness Jerome Mierzwa provided two recommendations regarding York's Cost of Service Study (COSS) for its water division:

- The systemwide and customer class specific base-extra capacity factors utilized in the Company's water COSS study are out of date, unreasonable and should be modified; and
- The water revenue increase authorized by the Commission in this proceeding should be distributed to the various customer classifications based on the results of the OCA's COSS study.⁵¹

The OCA respectfully requests that the Commission adopt OCA witness Mierzwa's modifications to the Company's COSS for its water operations and allocate the Settlement revenue increase in accordance with Mr. Mierzwa's modifications.

⁵⁰ *Phila. Indus. and Comm. Gas Users Group v. Pa. PUC*, 2025 Pa. Commw. LEXIS 133, * 38 (Pa. Cmwlth. Aug. 1, 2025) *reh'g denied* 2025 Pa. Commw. LEXIS 168 (Pa. Cmwlth. Sept. 24, 2025) (*PICGUG*).

⁵¹ OCA St. 4 at 3.

2. Water Class Cost of Service Study

a. Overview

The purpose of a COSS is to assist “a utility or commission in determining the level of costs properly recoverable from each of the various classes of customers to which the utility provides service. Allocation of recoverable costs to each class of service is generally based on cost causation.”⁵² According to OCA witness Mierzwa, the Company’s COSS identifies the cost of serving five customer classes: (1) Residential; (2) Commercial; (3) Industrial; (4) Private Fire Protection; and (5) Public Fire Protection.⁵³ Within each of the identified classes, a separate cost of service has also been determined for the gravity and re-pumped service areas.⁵⁴ Mr. Mierzwa does not take issue with the base-extra method that York used to develop its COSS and noted that it is acceptable by industry standards, but he testified that the data inputs the Company used need to be modified/updated in order to fairly allocate the Company’s revenue to its customer classes.⁵⁵

b. **The Company failed to meet its burden of proof and its unmodified water COSS should be given little weight because it relies upon outdated information.**

York Water used unreliable data for determining class specific maximum day and maximum hour extra capacity factors in its COSS.⁵⁶ Specifically, the class-specific and systemwide maximum day and maximum hour extra capacity factors utilized are outdated.⁵⁷ The maximum day and maximum hour capacity factors are necessary inputs in order to complete a COSS using the base-extra capacity method.

⁵² OCA St. 4 at 4.

⁵³ OCA St. 4 at 6.

⁵⁴ *Id.*

⁵⁵ OCA St. 4 at 4, 7.

⁵⁶ OCA St. 4 at 3.

⁵⁷ OCA St. 4 at 10.

Under the base-extra capacity method, the investment and costs are classified into four primary functional cost categories: (1) base or average capacity, (2) extra capacity, (3) customer, and (4) fire protection.⁵⁸ Once the investments and costs are classified, the investments and costs are then allocated to the customer classes.⁵⁹ Category (2), the extra capacity costs, are those costs that are associated with meeting the usage requirements in excess of the base or average usage, including “operating and capital costs for additional plant and system capacity beyond that required for average usage.”⁶⁰ OCA witness Mierzwa testified:

[e]xtra capacity costs in the Company’s study have been subdivided into costs necessary to meet maximum day extra demand and maximum hour extra demand. These extra capacity costs were allocated to customer class on the basis of each class’s maximum day and maximum hour usage in excess of average usage. Extra capacity costs related to fire protection service are allocated directly to the fire protection classifications.⁶¹

Further, “[u]nder the method set forth in the [American Water Works Association’s (AWWA’s)] manual, maximum day and maximum extra capacity costs are allocated to customer class based on the excess of each class’s non-coincident maximum day and maximum hour demands over average day and average hour demands, respectively.”⁶²

Base-extra capacity utilizes non-coincident peak demands to allocate extra capacity costs, where “non-coincident peak demands represent the maximum demands of the individual customer classifications regardless of when those demands occur.”⁶³ OCA witness Mierzwa clarified that “the sum of each customer class’s non-coincident demands will exceed the system coincident peak demand. The ratio obtained by dividing non-coincident demands by coincident demands is referred

⁵⁸ OCA St. 4 at 5-6.

⁵⁹ OCA St. 4 at 5.

⁶⁰ *Id.*

⁶¹ OCA St. 4 at 5-6.

⁶² *Id.*

⁶³ OCA St. 4 at 8.

to as the system diversity ratio in the AWWA Manual.”⁶⁴ As a result, identifying an accurate non-coincident peak demand under the base-extra capacity method is imperative to ensure that how each customer class utilizes the distribution system is accurately reflected in the costs attributable to that customer class, including the benefits which should accrue to that class based on how it affects the diversity of the system’s peak demands.

York Water’s COSS uses outdated usage data to determine its non-coincident peak demands for the maximum day and maximum hour inputs in the base-extra capacity methodology.

As stated by OCA witness Mierzwa:

The maximum day and maximum hour demands reflected in the Company’s water cost of service study were developed based on a combination of judgment, a customer demand study conducted on the York system during 1976 and 1977, and studies by other Pennsylvania water utilities.⁶⁵

Fifty-year-old customer-specific peak usage data is not reasonable to use in the base-extra capacity method.

Further, the Company’s systemwide peak usage data is stale and should not be relied upon for the purposes of the COSS. In the Company’s COSS, the systemwide maximum day capacity factor used by York is 1.52 and the systemwide maximum hour extra capacity factor used is 1.84.⁶⁶ The systemwide maximum day extra capacity factor used in York Water’s COSS was experienced in 2010, and the systemwide hour day extra capacity factor was experienced in 2006.⁶⁷ The customer demand study relied upon by York for the customer class specific demand factors is nearly 50 years old and no longer represents a reasonable demand study because of the changing mix of customers and usage.⁶⁸

⁶⁴ *Id.*

⁶⁵ *Id.* at 10.

⁶⁶ *Id.*, citing York Exhibit No. FVIII, Schedule E, page 5, York Exhibit No. FVIII, Schedule E, page 8.

⁶⁷ *Id.*

⁶⁸ OCA St. 4 at 10-11.

Given that the usage data relied upon by York Water in its COSS no longer reflects how its customers utilize its water system and creates an unreliable indicated cost of service by class, OCA witness Mierzwa provided an example as to how using stale usage data can create a skewed COSS:

For example, Exhibit No. FVIII. RS1-c Attachment, page 9 of the Company's filing identified the Industrial customers included in the Company's 1976 – 1977 customer demand study. Of the 19 customer accounts identified there, York no longer provides water utility service to five of those locations. In the 1976 – 1977 customer demand study, of the 14 accounts still served by York, the average daily consumption of those customers was 1,649,989 gallons. The average daily consumption of those 14 customers during 2024 was only 339,294 gallons, a decline of over 80%. Clearly, customer demands have changed significantly since the 1976 – 1977 demand study.⁶⁹

This example is illustrative for why York's systemwide and customer specific demand factors are outdated and should not be relied upon in the COSS.⁷⁰

In Rebuttal testimony, Company witness Gregory Herbert did not defend York's use of a customer demand study from 1976-1977. Rather, Mr. Herbert claimed that the Company submitted feasibility studies for conducting a customer class demand study in 1993 and 2007 and, in neither case, ultimately conducted a customer class demand study due to concerns that it would not have been able to recover the cost of completing the study.⁷¹ According to Mr. Herbert "the lack of more updated data [in the COSS] is not the Company's fault."⁷² Mr. Herbert's proffered reason for why York Water lacks accurate usage data is not relevant because it does not influence the results of the COSS; rather, the results of the COSS are influenced by the usage of stale data. The Company has not undertaken the effort to reassess customer demands. By relying on 15- to 20-year-old stale data, the Company has failed meet its burden of proof to support the adoption of its COSS and

⁶⁹ OCA St. 4 at 11.

⁷⁰ OCA St. 4 at 10.

⁷¹ York Water St. 107-R at 6-7.

⁷² *Id.* at 8.

failed to demonstrate with substantial evidence how the cost of service for the Company's water system should be determined.

Furthermore, the Company's use of 15- to 20-year-old data in its COSS to calculate systemwide maximum day and maximum hour extra capacity factors does not reflect usage within the last decade. According to OCA witness Mierzwa, the AWWA M1 Manual "indicates that demand data 'over a representative number of recent years' should be utilized. I believe that 10 years meets the standard identified in the AWWA M1 Manual, and the up to nearly 20 years relied upon by York does not. Demands experienced 20 years ago are not representative of current customer demands."⁷³ By contrast, the systemwide maximum day ratio recommended by Mr. Mierzwa occurred in 2024 and the systemwide maximum hour ratio occurred in 2017.⁷⁴

While the claim of Company witness Herbert that the system maximum day ratio is the highest peak day usage recorded on the system reflects the highest historic peak utilization of York Water's system, that level of system utilization has not occurred again since 2010.⁷⁵ Because cost of service is a forward-looking exercise, over-reliance on stale data diminishes the accuracy of a COSS and inaccurately reflects cost causation on York Water's system.⁷⁶ As York Water continues to grow through acquisitions of water systems in south-central Pennsylvania, the makeup of its overall customer base and how those customers utilize its system will continue to change and evolve; the maximum day ratio selected for the purposes of a COSS should reflect the current, dynamic nature of the Company's customer base, not historic usage patterns. As a result, the ratios relied upon by the Company in its COSS for customer-specific and systemwide demand data

⁷³ OCA St. 4SR at 2.

⁷⁴ *Id.*

⁷⁵ York St. 107-R at 5.

⁷⁶ *PICGUG* at **38-39.

should be given little weight because they are not representative of how York Water's customers will cause the Company to incur costs during the rate's effective period.

- c. **OCA witness Mierzwa's COSS should be adopted as it provides for a more accurate measure of the system's maximum day and maximum hour demand factors by using data reflecting present day usage of York Water's system.**

OCA witness Mierzwa recommended that a systemwide maximum day demand factor of 1.43 be utilized in the Company's COSS, compared to the Company's 1.52, and that a maximum hour demand factor of 1.65 be utilized, compared to the Company's 1.84.⁷⁷ Mr. Mierzwa based his proposed systemwide maximum day demand factor and maximum hour demand factor on the maximum day and maximum hour usage ratio to average day usage ratio experienced by York in the past 10 years.⁷⁸

To determine the appropriate class-specific demand factors, OCA witness Mierzwa utilized the procedure identified in Appendix A of the AWWA Manual to calculate the customer class specific demand factors. This procedure can be used to develop customer demand factors from the Company's actual system demand data and customer billing records.⁷⁹ In order to develop the factors, Mr. Mierzwa examined the annual system demand and monthly customer billing records for the most recent three year period for which data was available and developed the customer demand factors for each of those years.⁸⁰ OCA witness Mierzwa testified:

I elected to utilize the demand factors calculated for the most recent annual period (June 2024 – May 2025) because the AWWA Manual prescribes that the year with the highest ratio of system maximum day to system average day demand for a representative number of recent years should be used in the analysis. I would note

⁷⁷ OCA St. 4 at 11.

⁷⁸ *Id.*, citing York Exhibit No. FVIII, Sch. F.

⁷⁹ *Id.*

⁸⁰ OCA St. 4 at 12.

that, however, the resulting customer demand factors would not vary significantly if data from any of the past three years had been utilized.⁸¹

Mr. Mierzwa compared the demand factors used by York with the more recent demand factors that he calculated based on the AWWA Manual methodology and found that they were not comparable.⁸² Mr. Mierzwa created a comparison Table 1 to show the differences in the results:

Comparison of Customer Extra Capacity Demand Factors⁸³				
Class	Maximum Day		Maximum Hour	
	OCA	Company	OCA	Company
Residential	1.85	2.50	3.10	4.50
Commercial	1.65	1.60	2.70	3.30
Industrial	1.70	1.50	2.25	2.70

While the Company claims that Mr. Mierzwa's method of determining customer class demand factors is inferior to the stale data relied upon by the Company,⁸⁴ OCA witness Mierzwa demonstrated that his method of determining customer class demands is a better representation of York Water's customer classes' system utilization than the method presented by the Company.⁸⁵ For example, the maximum day extra capacity factor used by the Company for the Residential class is 2.5.⁸⁶ That is, the demands of Residential customers on a maximum day are expected to be 2.5 times the demands experienced on an average day.⁸⁷ To assess the reasonableness of the Company's estimate, Mr. Mierzwa compared total projected system demands using the Company's estimated maximum day demands of Residential customers with actual system maximum day demands.⁸⁸ This comparison revealed that, based on the maximum day demands assigned to the

⁸¹ *Id.*

⁸² OCA St. 4 at 11.

⁸³ OCA St. 4 at 13.

⁸⁴ York Water St. 107-R at 7-8.

⁸⁵ OCA St. 4SR at 5.

⁸⁶ OCA St. 4SR at 5.

⁸⁷ *Id.*

⁸⁸ *Id.*

Residential class of 2.5, the maximum day demands of the commercial and industrial customer classes would be less than the average day usage of the other customer classes.⁸⁹ It is unlikely that the demands of these other customer classes on a maximum day would be less than the average day demands of these other classes.

Mr. Mierzwa performed a similar comparison of the maximum hour demands assigned to each class and the maximum hour demands experienced on the York system.⁹⁰ This comparison revealed that based on the maximum hour demands assigned to the Residential class of 4.5, the maximum hour demand of Residential customers would exceed the actual total maximum hour demand experienced on the entire York Water system.⁹¹ He testified that it is impossible for the maximum hour demands of one customer class served by York to exceed the maximum hour demands of all customer classes served by York Water.⁹²

Based on these comparisons, Mr. Mierzwa concluded that the maximum day and maximum hour extra capacity demand factors used by the Company for the Residential class are unreasonable.⁹³ These comparisons also indicate that Mr. Herbert failed to conduct any specific analysis of the reasonableness of the demand factors presented in his COSS.⁹⁴ The AWWA M1 Manual approach Mr. Mierzwa utilized is more accurate because it is based on the recent actual consumption of York's customers over the last 10 years, not data from the 1970s.⁹⁵

- d. The results of the OCA's COSS should be adopted by the Commission because they are more accurate and produce more just and reasonable results than the Company's COSS.**

⁸⁹ *Id.*

⁹⁰ OCA St. 4SR at 6.

⁹¹ OCA St. 4SR at 6.

⁹² *Id.*; *see also* OCA Exh. JDM-1SR.

⁹³ OCA St. 4SR at 3-4.

⁹⁴ *Id.*

⁹⁵ *Id.*

The Company relies on 15- to 20-year-old data to determine its systemwide maximum day and maximum hour demand factors and nearly 50-year-old data to determine its class-specific maximum day and maximum hour demand factors. These data points are stale and the usage of these data points in the Company's COSS is unreasonable and does not reflect the manner in which York Water's current customers cause the Company to incur costs.

OCA witness Mierzwa used more recent demand data to determine the appropriate systemwide maximum day and maximum hour demand factors and used the widely accepted methodology in the AWWA Manual – including by York Water's own witness in a recent case⁹⁶ – to estimate class-specific maximum day and maximum hour demand factors. Mr. Mierzwa's modifications to the Company's COSS ensure that the COSS results reflect a representative period of time, as required by the AWWA Manual, instead of a longer, less reasonable period as originally proposed by the Company.

Therefore, the OCA respectfully requests that the Commission assign little weight to the Company's unmodified COSS proposal and adopt the recommendations of OCA witness Mierzwa regarding appropriate COSS to use for the purposes of revenue allocation and rate design for the Company's water operations.

3. Revenue Allocation

The Commission considers the results of cost of service studies to address ratemaking concerns such as unreasonable inter- and intra-class subsidization through revenue allocation.⁹⁷ After determining the appropriate COSS, the Commission then determines inter-class rates, “which involves the assignment of the revenue requirement between the various customer

⁹⁶ OCA St. 4SR at 6.

⁹⁷ *Lloyd*, 904 A. 2d at 1020.

classes.”⁹⁸ Revenue allocation should seek to eliminate class cross-subsidization and move customer classes towards their cost of service.⁹⁹ However, the Commission is also charged with balancing public policy considerations such as gradualism, incentivizing conservation, and ensuring that rates are affordable for all customers when allocating revenues between classes.¹⁰⁰

As stated by OCA witness Mierzwa, a sound revenue allocation should:

- Utilize class cost-of-service study results as a guide;
- Provide stability and predictability of the rates themselves, with a minimum of unexpected changes that are seriously adverse to ratepayers or the utility (gradualism);
- Yield the total revenue requirement;
- Provide for simplicity, certainty, convenience of payment, understandability, public acceptability, and feasibility of application; and
- Reflect fairness in the apportionment of the total cost of service among the various customer classes.¹⁰¹

York Water’s proposed rates for each customer class are equal to the indicated cost of service under its cost of service study.¹⁰² However, due to the deficiencies in the Company’s COSS based on its use of stale data discussed *supra*, the Company’s proposed revenue allocation methodology would not result in just and reasonable rates and should be rejected.

Utilizing York’s COSS to allocate revenue would adversely impact the Residential customer class by allocating costs in excess of the Residential class’s cost of service to that class. According to OCA witness Mierzwa, using the Company’s as-filed request of \$20,266,287 would increase rates for Residential customers by 30.7% overall, or 26.3% and 32.3% for Gravity and

⁹⁸ *Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) (*PECO Gas 2020*) at 247 (available at: <https://www.puc.pa.gov/pcdocs/1708475.docx>)

⁹⁹ *Lloyd v. Pa. PUC*, 904 A. 2d 1010, 1020 (Pa. Cmwlth. 2006).

¹⁰⁰ *PGW 2023* at 146; *PECO Gas 2020* at 247.

¹⁰¹ OCA St. 4 at 16.

¹⁰² *Id.*

Repumped customers respectively.¹⁰³ Conversely, Mr. Mierzwa's COSS would produce a 26.6% overall increase for Residential customers, or 22.5% and 28.3% for Gravity and Repumped customers respectively.¹⁰⁴ Mr. Mierzwa testified that allocating revenue in accordance with his recommendation would set each customer class's rates at the indicated cost of service under his modified COSS.¹⁰⁵

OCA witness Mierzwa recommended that if York were awarded less than the water revenue amount requested, that revenue for each class be scaled back proportionately.¹⁰⁶ In the Settlement, the Settling Parties agreed to a \$16.0 million dollar revenue increase for York Water's water division. Using York Water's COSS, customers in the Residential class would see an approximately 24.2% total increase or 20.8% and 25.5% for Gravity and Repumped customers, respectively. Conversely, under Mr. Mierzwa's COSS, at the revenue increase agreed-to in the Settlement, Residential customers would see an approximately 21.0% total increase or 17.7% and 22.3% for Gravity and Repumped customers, respectively.

The Commission should grant greater weight to the recommendation of OCA witness Mierzwa, whose proposed revenue allocation is based on customer usage data from the past decade and more accurately reflects the actual system utilization of York Water's customers. The OCA respectfully requests that its recommended revenue allocation be adopted by the Commission because it is rooted in fundamental cost causation principles and would produce just and reasonable rates.

- a. **The Company's proposed revenue allocation does not reflect cost causation and should be given little weight because it is based on the Company's unreasonable COSS.**

¹⁰³ OCA St. 4 at 15.

¹⁰⁴ *Id.* at 17.

¹⁰⁵ OCA St. 4R at 4.

¹⁰⁶ OCA St. 4 at 16.

The comparison of OCA witness Mierzwa’s COSS study and the Company’s produced the following unitized rate of return results for the Company’s as-filed rate request:

Unitized Rates of Return Under the Company’s and the OCA’s COSSs¹⁰⁷				
Customer Class	Present Rates		Proposed Rates	
<u>Gravity System</u>	Company	OCA	Company	OCA
Residential	0.91	1.07	1.00	1.09
Commercial	1.05	0.90	1.00	0.90
Industrial	0.95	0.72	1.00	0.84
Private Fire	1.53	1.36	1.00	0.93
Public Fire	1.28	1.17	1.00	0.98
<u>Repumped System</u>				
Residential	0.87	1.01	1.00	1.09
Commercial	0.97	0.84	1.00	0.91
Industrial	0.99	0.78	1.00	0.86
Private Fire	1.66	1.44	1.00	0.91
Public Fire	1.24	1.12	1.00	0.98

Mr. Mierzwa’s Table shows that, at the revenue increase proposed by York for each class, his COSS indicates that the Residential class would be paying more than its indicated cost of service while the Commercial, Industrial, and Private Fire classes would be paying “modestly less than their indicated cost of service.”¹⁰⁸ However, under the OCA’s proposed revenue distribution, the unitized rate of return for class would be 1.00.¹⁰⁹

As a result, utilizing a COSS that more accurately reflects the demands that York Water’s current customer base places on its water system demonstrates that the Company’s proposed revenue allocation would not result in just and reasonable rates because it moves classes away

¹⁰⁷ OCA St. 4 at 14.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

from the indicated cost of service for each class.¹¹⁰ Therefore, the revenue allocation supported by the Company and the OSBA should be given little weight.

- b. The OCA's proposed revenue allocation accurately reflects how York Water's customers utilize the water system and should be adopted.**

OCA witness Mierzwa recommended that any rate increase authorized in this proceeding be distributed based on the cost of service indicated by his modifications to the Company's COSS and that any authorized revenue increase should be scaled back proportionately in accordance with the indicated costs of service.¹¹¹ Based on the Company's as-filed position, OCA witness Mierzwa recommended the following revenue allocation:

¹¹⁰ See *Lloyd*, 904 A.2d at 1020.

¹¹¹ OCA St. 4 at 16.

OCA Proposed Distribution of Water Revenue Increase for the As-Filed Rate Increase Request¹¹²				
Class	Present Rates	Proposed Rates	Increase	Percent
<u>Residential</u>				
Gravity	\$11,660,722	\$14,279,473	\$2,618,751	22.5%
Repumped	\$30,262,755	\$38,813,844	\$8,551,089	28.3%
Total:	\$41,923,477	\$53,093,317	\$11,169,840	26.6%
<u>Commercial</u>				
Gravity	\$4,823,965	\$6,383,079	\$1,559,114	32.3%
Repumped	\$10,424,286	\$14,697,563	\$4,273,277	41.0%
Total:	\$15,248,251	\$21,080,642	\$5,832,391	38.2%
<u>Industrial</u>				
Gravity	\$1,045,820	\$1,475,304	\$429,484	41.1%
Repumped	\$4,218,893	\$6,131,526	\$1,912,633	45.3%
Total:	\$5,264,713	\$7,606,830	\$2,342,117	44.5%
<u>Private Fire</u>				
Gravity	\$851,176	\$1,019,710	\$168,534	19.8%
Repumped	\$2,285,716	\$2,722,189	\$436,473	19.1%
Total:	\$3,136,892	\$3,741,899	\$605,007	19.3%
<u>Public Fire</u>				
Gravity	\$325,248	\$362,287	\$37,039	11.4%
Repumped	\$1,579,987	\$1,859,881	\$279,894	17.7%
Total:	\$1,905,235	\$2,222,168	\$316,933	16.6%
Total:	\$67,478,569	\$87,744,856	\$20,266,287	30.0%

The OCA maintains its recommendation that the Commission should allocate any revenue increase in accordance with Mr. Mierzwa’s modifications to the Company’s COSS and proportionately scale back the revenue allocated to York Water’s for the revenue increase agreed to in the Settlement.

Upon review of OCA witness Mierzwa’s rebuttal testimony, OSBA’s witness Roger Cathcart agreed that using outdated determinants, “has led to the cost of service study potentially

¹¹² OCA St. 4 at 17.

not accurately reflecting the true cost to serve.”¹¹³ This concession is an adjustment from the OSBA’s Direct testimony where Mr. Cathcart recommended that the Commission, “[a]dopt York’s proposed revenue allocation for water service, as it aligns all rate classes with their respective cost-based revenue levels.”¹¹⁴ In Surrebuttal testimony, Mr. Cathcart said:

An updated demand study is crucial to maintaining the integrity of the WCOSS and ensuring equitable revenue distribution. Without it, the [maximum day demand] and [maximum hour demand] determinants risk becoming misaligned with actual conditions, which could lead to unfair rates for various classes of customers. *Mr. Mierzwa’s analysis suggests a misalignment.*¹¹⁵

Though OSBA witness Cathcart does not recommend adoption of Mr. Mierzwa’s alternative COSS, he does not question the accuracy of his analysis and prefers additional analysis and evaluation through a third-party demand study.¹¹⁶ Rather than adopt the Company’s revenue allocation, OSBA recommends the Commission direct York Water to conduct and file an updated demand study within six months, which should precede final rate approvals to ensure the COSS supports the proposed allocations.¹¹⁷ The OCA supports York Water conducting an updated demand study to more accurately reflect system demands for future rate proceedings, particularly in light of York Water’s ongoing acquisitions. However, OCA witness Mierzwa’s alternative COSS is in accordance with the AWWA Manual and preferable in the present proceeding.

The OCA’s recommended revenue allocation for the increase in operating revenues for the Company’s water division is rooted in the indicated cost of service for York Water’s customers, based on system utilization from a representative number of years, not based on the highest peak that the Company has ever experienced regardless of when it occurred.¹¹⁸ The Company’s revenue

¹¹³ OSBA St. 2SR at 2.

¹¹⁴ OSBA St. 2 at 3.

¹¹⁵ OSBA St. 2SR at 2 (emphasis added).

¹¹⁶ OSBA St. 2SR at 3.

¹¹⁷ *Id.*

¹¹⁸ OCA St. 4SR at 2.

allocation is backwards-looking, assigning costs based on a retrospective analysis as to how York Water's distribution provided service to a prior mix of customers which is not representative of its current mix of customers.¹¹⁹ This approach does not reflect the cost to serve the Company's water service during the rate effective period and should be given little weight. Instead, the OCA's use of more accurate and recent data, representative of actual and current system utilization, should be given greater weight when allocating revenue. Therefore, the OCA respectfully requests that the Commission allocate the agreed-upon revenue increase contained in the Settlement to York Water's customers as a proportional scale back of OCA witness Mierzwa's recommended revenue allocation.

4. Summary and Alternatives

The Commission should conclude that York failed to meet its burden of proof to support the adoption of its COSS or proposed revenue allocation, that the OCA met its burden of production in offering an alternative COSS that will result in just and reasonable rates, and the Commission should therefore adopt the OCA's alternative COSS. In sum, the OCA's recommended modifications to the Company's proposed COSS more accurately reflect York Water's customers' system utilization by using customer-specific and systemwide demand data from a more representative period of time – the past decade – to calculate the indicated cost of service. The Company, by contrast, supports the inclusion of 15-, 20-, and 50-year-old demand data to determine customers' indicated cost of service without providing evidence to support the conclusion that this data remains representative of how York Water's customers use its water system today. The usage of such data creates unreasonable and inaccurate indicated costs of service for York Water's customer classes and should be rejected as such. Further, the Company's reliance

¹¹⁹ Compare with PICGUG at **40-41.

on such data for the purposes of revenue allocation create rates which are not just and reasonable and, therefore, should be not implemented by the Commission. Instead, the Commission should utilize the recommended revenue allocation and associated scale back provided by OCA witness Mierzwa for the purpose of allocating the Settlement revenue increase to the Company's water division because the OCA's allocation proposal more accurately reflects the actual cost of service for York Water's customer classes. As a result, York failed to meet its burden of proof to support adoption of its COSS or proposed revenue allocation and the OCA's recommendation should be adopted because it would result in just and reasonable rates.

IV. CONCLUSION

In summary, the OCA respectfully requests the Commission approve the Joint Petition for Partial Settlement and adopt the Joint Petition for Partial Settlement without modification. The Settlement is the result of significant compromise among the OCA, OSBA, I&E, and the Company, is within the range of reasonable results which the parties could expect from litigation, is in the public interest, and would result in just and reasonable rates. To accompany approval of the Partial Settlement, the OCA respectfully requests that the Commission reject the Company's cost of service study, approve the OCA's modified cost of service study, and allocate the Settlement increase in revenues for the Company's water operations among its customer classes in accordance with the OCA's recommendation based on its modifications to the Company's cost of service study.

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OCA Proposed Findings of Fact

1. The Company's cost of service study identifies the cost of serving five customer classes: (1) Residential; (2) Commercial; (3) Industrial; (4) Private Fire Protection; and (5) Public Fire Protection. OCA St. 4 at 6.
2. Within each of the identified classes, a separate cost of service has also been determined for the gravity and re-pumped service areas. OCA St. 4 at 6.
3. The base-extra capacity method York Water used to develop its cost of service study is acceptable by industry standards. OCA St. 4 at 4, 7.
4. York Water used unreliable data for determining class specific maximum day and maximum hour extra capacity factors in its cost of service study. OCA St. 4 at 3.
5. Under the base-extra capacity method, the investment and costs are classified into four primary functional cost categories: (1) base or average capacity, (2) extra capacity, (3) customer, and (4) fire protection. Once the investments and costs are classified, the investments and costs are then allocated to the customer classes. OCA St. 4 at 5, 6.
6. Extra capacity costs are those costs that are associated with meeting the usage requirements in excess of the base or average usage, including operating and capital costs for additional plant and system capacity beyond that required for average usage. OCA St. 4 at 5.
7. Extra capacity costs in the Company's study have been subdivided into costs necessary to meet maximum day extra demand and maximum hour extra demand. OCA St. 4 at 5-6.
8. These extra capacity costs were allocated to each customer class on the basis of that class's maximum day and maximum hour usage in excess of average usage. OCA St. 4 at 5-6.
9. Extra capacity costs related to fire protection service were allocated directly to the fire protection classifications. OCA St. 4 at 5-6.
10. Under the method set forth in the American Water Works Association's Manual, maximum day and maximum extra capacity costs are allocated to customer class based on the excess of each class's non-coincident maximum day and maximum hour demands over average day and average hour demands, respectively. OCA St. 4 at 5-6.
11. The base-extra capacity method utilizes non-coincident peak demands to allocate extra capacity costs, where non-coincident peak demands represent the maximum demands of the individual customer classifications regardless of when those demands occur. OCA St. 4 at 8.

12. The sum of each customer class's non-coincident demands will exceed the system coincident peak demand. The ratio obtained by dividing non-coincident demands by coincident demands is referred to as the system diversity ratio. OCA St. 4 at 8.
13. Utilizing non-coincident peak demands, instead of coincident peak demands, is appropriate because "the benefits of diversity in customer class consumption patterns should accrue to all classes in proportion to their use of the system, and not be allocated primarily to a particular class that happens to peak at a time different from other users of the system." OCA St. 4 at 9 (quoting AWWA Manual, Appendix A, pages 374 - 375, 7th Edition (2017)).
14. Because a water distribution system must be sized to serve coincident peak demands, a system with diverse demand patterns and disparate non-coincident peaks does not need to be sized to serve as significant of a peak demand and has greater overall capacity utilization and efficiency of usage, creating benefits for all customers connected to the system. OCA St. 4 at 9.
15. The maximum day and maximum hour demands reflected in the Company's water cost of service study were developed based on a combination of judgment, a customer demand study conducted on the York Water system during 1976 and 1977, and studies by other Pennsylvania water utilities. OCA St. 4 at 10.
16. In the Company's cost of service study, the systemwide maximum day capacity factor used by York Water is 1.52 and the systemwide maximum hour extra capacity factor used is 1.84. OCA St. 4 at 10 (*citing* York Exhibit No. FVIII, Schedule E, page 5, York Exhibit No. FVIII, Schedule E, page 8).
17. The systemwide maximum day extra capacity factor used in York Water's cost of service study was experienced in 2010, and the systemwide hour day extra capacity factor was experienced in 2006. OCA St. 4 at 10.
18. Of the 19 customer accounts identified in the Company's 1976-1977 customer demand study, York Water no longer provides water utility service to five of those locations. In the 1976 – 1977 customer demand study, of the 14 accounts still served by York Water, the average daily consumption of those customers was 1,649,989 gallons. The average daily consumption of those 14 customers during 2024 was only 339,294 gallons, a decline of over 80%. OCA St. 4 at 11.
19. The AWWA M1 Manual identifies a standard that utilities should use demand data "over a representative number of recent years." OCA St. 4SR at 2.
20. The Company's proposed system maximum day ratio is the highest peak day usage recorded on the system reflects the highest historic peak utilization of York Water's system, but that level of system utilization has not occurred since 2010. York Water St. 107-R at 5.

21. York Water's data does not meet the "over a representative number of recent years" standard from the AWWA M1 Manual. OCA St. 4SR at 2.
22. The OCA's recommended systemwide maximum day ratio occurred in 2024 and its recommended systemwide maximum hour ratio occurred in 2017. OCA St. 4SR at 2.
23. The OCA recommended that a systemwide maximum day demand factor of 1.43 be utilized in the Company's COSS, compared to the Company's 1.52, and that a maximum hour demand factor of 1.65 be utilized, compared to the Company's 1.84. OCA St. 4 at 11.
24. The OCA's proposed systemwide maximum day demand factor and maximum hour demand factor are based on the maximum day and maximum hour usage ratio to average day usage ratio experienced by York in the past 10 years. OCA St. 4 at 11 (citing York Exhibit No. FVIII, Sch. F).
25. The OCA calculated the appropriate class-specific demand factors using the procedure identified in Appendix A of the AWWA Manual based on the Company's actual system demand data and customer billing records over the past three years. OCA St. 4 at 11-12.
26. The more recent demand factors that the OCA proposed and are not comparable to those used by the Company in its cost of service study and are unreasonable because the maximum day demand assigned to non-Residential customer classes class exceed average day usage for those classes and the maximum hour demand assigned to the Residential class exceeds the total system maximum hour demand. OCA St. 4 at 11, OCA St. 4SR at 3-4.
27. York Water witness Herbert failed to conduct a specific analysis of the reasonableness of the demand factors presented in his COSS. OCA St. 4SR at 3-4.
28. The AWWA M1 Manual approach that OCA witness Mierzwa utilized is more accurate because it is based on the recent actual consumption of York Water's customers over the last 10 years, not data from the 1970s. OCA St. 4SR at 3-4.
29. A sound revenue allocation should (1) utilize class cost-of-service study results as a guide; (2) provide stability and predictability of the rates themselves, with a minimum of unexpected changes that are seriously adverse to ratepayers or the utility (gradualism); (3) yield the total revenue requirement; (4) provide for simplicity, certainty, convenience of payment, understandability, public acceptability, and feasibility of application; and (6) reflect fairness in the apportionment of the total cost of service among the various customer classes. OCA St. 4 at 16.
30. Using the Company's as-filed request of \$20,266,287 would increase rates for Residential customers by 30.7% overall, or 26.3% and 32.3% for Gravity and Repumped customers respectively. OCA St. 4 at 15.

31. The OCA's cost of service study would produce a 26.6% overall increase for Residential customers, or 22.5% and 28.3% for Gravity and Repumped customers respectively at the as-filed revenue requirement increase request. OCA St. 4 at 17.
32. Allocating revenue in accordance with the OCA's recommendation would set each customer class's rates at the indicated cost of service under the OCA's proposed cost of service study. OCA St. 4R at 4.
33. At the revenue increase proposed by York for each class, the Residential class would be paying more than its indicated cost of service while the Commercial, Industrial, and Private Fire classes would be paying "modestly less than their indicated cost of service." OCA St. 4 at 14.
34. Under the OCA's proposed revenue distribution, the unitized rate of return for class would be 1.00. OCA St. 4 at 14.
35. Any rate increase authorized in this proceeding should be distributed based on the cost of service indicated by the OCA's modifications to the Company's COSS and that any authorized revenue increase should be scaled back proportionately in accordance with the indicated costs of service. OCA St. 4 at 16.
36. The OCA's recommended revenue allocation for the increase in operating revenues for the Company's water division is rooted in the indicated cost of service for York Water's customers, based on system utilization from a representative number of years, not based on the highest peak that the Company has ever experienced regardless of when it occurred. OCA St. 4SR at 2.

OCA Proposed Conclusions of Law

I. Overall

1. The regulation of utilities is one of the most important functions traditionally associated with the police power of the States. *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983).
2. The Public Utility Code (Code) governing sales that are only rationally dealt in by a monopoly is a proper exercise of the state police power to regulate the health, safety, morals, and general welfare of citizens. *Relief Elec. Light, Heat & Power Co's. Petition*, 63 Pa. Super. 1, *5-10 (1916), 1916 Pa. Super. LEXIS 89, **6-15 (*Relief Elec.*); *Jenkins Twp. v. Pub. Serv. Comm'n*, 65 Pa. Super. 122 (1916), 1916 Pa. Super. LEXIS 30, **15-16 (*Jenkins Twp.*).
3. The York Water Company, including its Water and Wastewater units, is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa. C.S. § 102.
4. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. § 101, *et seq.*
5. The utility requesting the rate increase has the burden of establishing the justness and reasonableness of every element of its requested rate increase. 66 Pa. C.S. §§ 315(a), 1301; *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).
6. York has the burden of proving that every element of its proposed rates is just and reasonable. 66 Pa. C.S. §§ 315(a), 1301, and 1308(e).
7. A utility which relies on the use of a fully projected future test year “in discharging its burden of proof,” and must provide “appropriate data evidencing the accuracy of the estimates contained in the future test year or a fully projected future test year.” 66 Pa. C.S. § 315(e).
8. As a matter of law, a public utility’s rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a).
9. A public utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.” *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

10. The Commission “has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996).
11. The Commission has the “power to make and apply policy” concerning the appropriate balance between rates charged to consumers and returns allowed to utility investors. *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995).
12. Given that a utility’s general rate increase request will substantially affect the interests of consumers, the Commission must “consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers.” 71 P.S. § 309-5.

II. Allocation

1. Determining the appropriate cost of service by class is a forward-looking exercise which allocates to future beneficiaries their share of the costs incurred to provide them with service. *Phila. Indus. and Comm. Gas Users Group v. Pa. PUC*, 2025 Pa. Commw. LEXIS 133, *38 (Pa. Cmwlth. Aug. 1, 2025) *reh’g denied* 2025 Pa. Commw. LEXIS 168 (Pa. Cmwlth. Sept. 24, 2025).
2. The Commission considers the results of Cost-of-Service Studies (COSS) to address ratemaking concerns such as unreasonable inter- and intra-class subsidization through revenue allocation *Lloyd v. Pa. PUC*, 904 A. 2d 1010, 1020 (Pa. Cmwlth. 2006).
3. York Water must show that “every component of its rate request” meets statutory requirements. This burden remains with York “throughout the course of the rate proceeding.” *Pa. PUC v. Pa.-American Water Co.*, 231 P.U.R.4th 277, 2004 Pa. PUC LEXIS 29, *16-18 (Jan. 29, 2004) (*PAWC 2004*) (*citing Berner v. Pa. PUC*, 116 A.2d 738 (Pa. 1955) (*Berner*)).
4. Here the OCA, unlike York Water, does not have the burden of proof. *Pa. PUC v. Pa.-American Water Co.*, 231 P.U.R.4th 277, 2004 Pa. PUC LEXIS 29, *16-18 (Jan. 29, 2004) (*PAWC 2004*) (*citing Berner v. Pa. PUC*, 116 A.2d 738 (Pa. 1955) (*Berner*)). *See also Berner*, 116 A.2d at 744; *Pa PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983); *University of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Pa. PUC v. PPL Elec. Utils. Corp.*, 2004 Pa. PUC LEXIS 40 (Order entered Dec. 22, 2004).
5. York Water failed to meet its burden of proof regarding its cost of service study because York Water’s cost of service study relied on decades-old, stale data to inform a forward-looking exercise. *Cf. Phila. Indus. and Comm. Gas Users Group v. Pa. PUC*, 2025 Pa. Commw. LEXIS 133, * 38 (Pa. Cmwlth. Aug. 1, 2025) *reh’g denied* 2025 Pa. Commw. LEXIS 168 (Pa. Cmwlth. Sept. 24, 2025).

6. The OCA's cost of service study relies on recent data that reflects the forward-looking nature of allocation to future beneficiaries, and thus it is the appropriate COSS for the Commission to use in cost allocation. *See Phila. Indus. and Comm. Gas Users Group v. Pa. PUC*, 2025 Pa. Commw. LEXIS 133, * 38 (Pa. Cmwlth. Aug. 1, 2025) *reh'g denied* 2025 Pa. Commw. LEXIS 168 (Pa. Cmwlth. Sept. 24, 2025).
7. After determining the appropriate cost of service study, the Commission then determines inter-class rates, "which involves the assignment of the revenue requirement between the various customer classes." *Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) at 247.
8. Revenue allocation should seek to eliminate class cross-subsidization and move customer classes towards their cost of service. *Lloyd v. Pa. PUC*, 904 A. 2d 1010, 1020 (Pa. Cmwlth. 2006).
9. The Commission is also charged with balancing public policy considerations such as gradualism, incentivizing conservation, and ensuring that rates are affordable for all customers when allocating revenues between classes. *Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) at 247.
10. The OCA's cost of service study, which more accurately reflects the demands that York Water's current customer base places on its water system, demonstrates that the Company's proposed revenue allocation failed to meet its burden of proof because it moves classes away from the indicated cost of service for each class. *Lloyd v. Pa. PUC*, 904 A. 2d 1010, 1020 (Pa. Cmwlth. 2006).
11. The OCA's cost of service study and recommended revenue allocation would result in just and reasonable rates and, therefore, the Commission should adopt it. *See Pa. C.S. § 1301*.

OCA Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. York Water Company shall not place into effect the rates, rules, and regulations contained in Supplement No. 165 to Tariff Water-Pa. P.U.C. No. 14 and Supplement No. 26 to Tariff Wastewater-Pa. P.U.C. No. 1, which have been found to be unjust and unreasonable and therefore, unlawful.
2. York Water Company shall be permitted to file tariffs, tariff supplements, or tariff revisions containing proposed rates, rules, and regulations to increase annual revenues in the total amount of not more than \$16,000,000 for its water operations and \$2,850,000 for its wastewater operations.
3. York Water Company shall allocate the authorized increase in operating revenues for its water operations to each customer class and rate schedule within each class in accordance with the recommendation of the Office of Consumer Advocate.
4. The Joint Petition for Settlement filed on October 29, 2025, and signed by the York Water Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate be granted, and the Settlement be approved and adopted without modification.

DATE: _____

John M. Coogan
Administrative Law Judge

Emily A. Farren
Administrative Law Judge

**LIST OF TESTIMONY AND EXHIBITS ADMITTED INTO THE EVIDENTIARY
RECORD OF THE OFFICE OF CONSUMER ADVOCATE**

The following evidence submitted by the Office of Consumer Advocate (OCA) was admitted into the evidentiary record at the Evidentiary Hearing held on October 14, 2025:

DIRECT TESTIMONY

OCA Statement 1	Public, Confidential, and Highly Confidential Direct Testimony of Dante Mugrace with Exhibits DM-1W through DM-21W and DM-1WW through DM-19WW and Verification.
OCA Statement 2	Direct Testimony of David J. Garret with Exhibits DJG-1 through DJG-16, Appendices A and B, and Verification.
OCA Statement 3	Direct Testimony of James Garren with Exhibits JSG-1 through JSG-3 and Verification.
OCA Statement 4	Direct Testimony of Jerome Mierzwa with Schedules JDM-1 through JDM-3 and Verification.
OCA Statement 5	Direct Testimony of Barbara Alexander with Exhibits BA-1 through BA-5 and Verification.

SUPPLEMENTAL DIRECT TESTIMONY

OCA Statement 6S	Supplemental Direct Testimony of LeeAnn Wise with Exhibits LMW-1S through LMW-2S and Verification.
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REBUTTAL TESTIMONY

OCA Statement 4R	Rebuttal Testimony of Jerome Mierzwa and Verification.
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SURREBUTTAL TESTIMONY

OCA Statement 1SR	Public and Confidential Surrebuttal Testimony of Dante Mugrace with Exhibits DM-SR-1W through DM-SR-22W and DM-SR-1WW through DM-SR-19WW, Appendix A, and Verification.
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OCA Statement 2SR	Surrebuttal Testimony of David J. Garret and Verification.
OCA Statement 3SR	Surrebuttal Testimony of James Garren and Verification.
OCA Statement 4SR	Surrebuttal Testimony of Jerome Mierzwa with Schedule JDM-1SR and Verification.
OCA Statement 5SR	Public and Confidential Surrebuttal Testimony of Barbara Alexander with Exhibits BA-6 and Verification.