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December 12, 2016

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

VIA ELECTRONIC FILING

**RE: Pennsylvania Public Utility Commission, *et al.* v. City of DuBois – Bureau of Water;
Docket No. R-2016-2554150**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply Brief of the City of DuBois – Bureau of Water, in the above-referenced docket.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to the City of DuBois – Bureau of Water

Enclosure

c: Deputy Chief Administrative Law Judge Mark A. Hoyer (via E-Mail and First-Class Mail)
Certificate of Service

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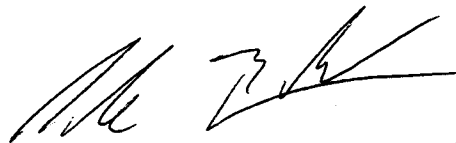
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Dated this 12th day of December, 2016, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* :
v. : **R-2016-2554150**
City of Dubois – Bureau of Water :

**REPLY BRIEF OF THE
CITY OF DUBOIS – BUREAU OF WATER**

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Dated: December 12, 2016

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I. INTRODUCTION

The procedural history of this proceeding following submission of the City of DuBois – Bureau of Water's ("City") rate filing on June 30, 2016 with the Pennsylvania Public Utility Commission ("PUC" or "Commission") was summarized in the City's Main Brief filed on November 29, 2016, and is hereby incorporated by reference.

The City also received Main Briefs from the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Bureau of Investigation and Enforcement ("I&E"), and Sandy Township. Pursuant to the Briefing Order, the City hereby files its Reply Brief responding to the various arguments in the Main Briefs of the OCA, I&E, OSBA (collectively, the "State Advocates" or "Statutory Advocates") and Sandy Township.

II. SUMMARY OF ARGUMENT

The City's Main Brief provided background information on the City's characteristics and its current service arrangements, including describing the City's continued provision of water service without any Formal Complaints from customers. City Main Brief, pp. 4-5. Under the City's current rate scheme, it cannot generate a reasonable rate of return on its water assets dedicated to its jurisdictional customers. *Id.* at 5. To continue furnishing quality service, increases to rates are necessary and appropriate.

As previously discussed, I&E, OCA, OSBA, and Sandy Township each provide recommendations on the City's proposed revenues, expenses, rate base adjustments, rate of return, and tariff structure. The vast majority of those parties' proposals are unjustified and would endanger the City's ability to meet its obligations to furnish quality water service to its jurisdictional customers. I&E, Sandy Township, and OCA recommend considerable alterations to the City's proposed revenues, expenses, and rate base that, if implemented, would jeopardize the

City's ability to earn sufficient revenues to cover the costs of providing safe and reliable water service to its customers.

In response, the City has focused on relating each of the parties' rate base, revenue, expense, and rate of return arguments to applicable PUC precedent and record facts. As such, the City's Reply Brief addresses the City's opposition to the other parties' incorrect factual assertions and clarifies the parties' misinterpretations of Commission precedents. The City also responds to Sandy Township's baseless attempt to introduce extra-record information as evidence in this proceeding, responds to the OCA's defense of certain affirmations made by its witness, Mr. Terry Fought, answers both of I&E's motions to strike portions of the City's testimony, and clarifies the City's position on other miscellaneous issues. Accordingly, the City's rate filing should be adopted, as modified by the City's rebuttal testimony, oral rejoinder, and any stipulations or conclusions set forth in its Main Brief and below.

III. DISPUTED FINDINGS OF FACT

Please reference Appendix A for the City's response to OCA's Findings of Fact.

IV. ARGUMENT

A. Rate Base

Sandy Township indicates that it "supports the rate base adjustments of the Statutory Advocates reducing City Water Bureau's rate base claim." Sandy Township Main Brief, p. 4. It is unclear what Sandy Township intends from this statement as the respective State Advocates presented different recommendations in this proceeding on rate base. Regardless, the City addresses the respective proposals from the State Advocates, as necessary, in its Main and Reply Briefs.

Notwithstanding the statements from Sandy Township, only OCA proposes actual adjustments to the City's proposed rate base. The arguments advanced by OCA consist of

unreasonable demands for documentation of short-term projects scheduled for completion towards the end of the future test year and were rebutted in the City's Main Brief. As explained in the City's Main Brief and further discussed below, the City's adjusted rate base appropriately and reasonably reflects the value of the City's outside water assets as of December 31, 2016.

1. Plant in Service

None of the parties dispute the City's calculation of Plant in Service. However, the City wishes to clarify the difference between OCA's calculation of the City's claimed rate base (\$14,980,254) versus the slightly lower figure calculated by the City and I&E (\$14,727,868).

OCA indicates that the City made an adjustment during rejoinder¹ in the amount of \$642,060, resulting in a "revised rate base claim of \$14,980,254." OCA Main Brief, p. 8. This figure is different from the rate base claim of \$14,727,868 cited by I&E and the City. I&E Main Brief, p. 5; City Main Brief, p. 6. To resolve any confusion, the City would like to clarify that the reason why its rate base claim appears different from OCA's recitation of the rate base claim is that the OCA included cash working capital in its calculation of the City's rate base claim, while I&E's and the City's restatement of its rate base claim in its Main Brief was exclusive of cash working capital. As clarified above, OCA, I&E, and the City agree on the City's rate base claim.

2. Additions to Rate Base

While I&E does not dispute the City's rate base adjustments, the OCA continues to disagree with the City's rate base claims pertaining to certain projects. The PUC should give no consideration or weight to the OCA's overly severe adjustments to its Heating and Air Conditioning; High Street Mains Additions Project; Fire Hydrants; High Street Fire Hydrants

¹ The City wishes to clarify that it did not make an adjustment to its rate base during rejoinder, rather the City adjusted its rate base during rebuttal testimony. City Statement No. 3-R, p. 2, lines 9-11 and Exhibit_(CEH-3RJ).

Project; Billing, Payroll, and Accounting Software; and Phone System expenses.² As evidenced in the City's Main Brief and further discussed below, the City has dutifully updated its claimed rate base to reflect additional developments throughout the FTY. Each of the remaining projects will be placed in public service prior to completion of the FTY on December 31, 2016, and therefore are properly included in the City's rate base.

OCA claims the "City has neither started the project, nor spent any money on the project." OCA Main Brief, p. 9. OCA further suggests that when asked about the timeframe for completing this project, the City indicated only that it anticipates "to have this completed by the end of 2016." *Id.* Furthermore, OCA claims "the City was asked to provide all of the information concerning this project [and in response] City witness Spanos stated that requiring information which would establish that the plant additions would be in service by the end of the future test year is 'an unreasonable expectation'." *Id.*

First, OCA's representation misstates Mr. Spanos' statement. Mr. Spanos actually indicated:

These additional reductions by OCA from future test year activity are due to a start or completion date not being established as of the time of the responses to data requests. This is an unreasonable expectation. Many, if not all of these projects will take less than three months to complete and do not require advance planning.

City Statement No. 3-R, p. 3, lines 2-5. As evidenced by the above transcript excerpt, Mr. Spanos opined only upon the unreasonableness of OCA's demand for firm documentation at a point well beyond the end of the FTY. Mr. Spanos further clarified the remaining projects are short-term

² Regarding Cash Working Capital, both OCA and the City concur that Cash Working Capital should be adjusted consistent with the rule of thumb method of calculating Cash Working Capital is based on 12.5% of approved O&M expense. *Id.* Accordingly, the City opposes OCA's jurisdictional adjustment to Cash Working Capital of \$9,264, but concurs with the methodology.

endeavors as opposed to complex capital improvements. *See id.* As a result, these projects do not require considerable advance planning. Accordingly, it is unreasonable for OCA to expect the City to furnish the requested documentation for these smaller projects at the time the discovery response was answered because many months remained in the future test year period.

OCA also claims the "end of the Future Test Year is less than two months away and the City has not provided a start date and an estimated time-frame for completion." OCA Main Brief, p. 9. OCA further purports that the City cannot establish "known and measurable" expenses meriting inclusion in rate base pursuant to *Pa P.U.C. v. City of Lancaster – Sewer Fund*, 2005 Pa. P.U.C. LEXIS 44 (Jan. 1, 2005) ("*Lancaster Sewer*"). OCA Main Brief, pp. 9-10. Notably, *Lancaster Sewer* is a fundamentally different case from the instant proceeding and cannot be considered controlling precedent. In *Lancaster Sewer*, the FTY ended before evidentiary hearings began. Conversely, here, as noted by OCA, two months remained in the FTY as of the time of evidentiary hearings. Accordingly, it is unreasonable for OCA to remove these projects from the future test year, especially when the City has indicated that this project is a short-term project. City Statement No. 3-R, lines 4-5 and lines 12-15.

Additionally, City Witness John Spanos demonstrated such projects would be completed in the FTY after removing previously included projects that would not meet the necessary December 31, 2016, completion threshold for inclusion in rate base. City Main Brief, p. 7. Mr. Spanos testified that the remaining projects do not require advance planning or significant lead time, leading to the expectation for completion by the end of the FTY. *Id* at 8. While challenging the inclusion of the projects on the basis of furnished documentation, OCA never contested the conclusion that the referenced projects are all relatively short-term operations easily completed within the remaining FTY period. *See* OCA Main Brief, pp. 8-17. Accordingly, it is unreasonable

to accept the OCA's proposed rate base when OCA's only justification for these additional adjustments is the lack of an established start date and completion date for short-term projects that do not require significant lead time or planning. City Statement No. 3-R, p. 4, lines 5-15.

The Commission should further consider its precedent indicating allowing for inclusion in rate base of expenditures incurred even after the FTY. The PUC has previously found that "[s]ubstantial expenditures for projects to be completed shortly after the end of the test year will be allowed if they do not affect the level of operations at year end – *i.e.*, they are nonrevenue producing and nonexpense reducing – and they improve the environment and/or reliability and safety of service." *Pa. Pub. Util. Comm'n. v. The Bell Telephone Co. of Pa.*, 51 Pa. P.U.C. 570 (Dec. 15, 1997) , **576; *see also Pa. Pub. Util. Comm'n. v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 407 (Dec. 9, 1976) , **420-421 (indicating that the Commission includes projects in the rate base if they are completed approximately 6-7.5 months after the end of the test year).

Accordingly, the inclusion of short-term projects anticipated for completion within the final two months of the FTY is entirely reasonable. Adoption of OCA's sever standard would effectively curtail the FTY beyond the permitted 12-month timeframe for recognizing expenses. Therefore, the PUC should accept the City's revised rate base, \$14,727,868 (excluding cash working capital) without OCA's unnecessary and confiscatory modifications. Alternatively, to the extent the Commission denies the City's claimed rate base additions, the City reserves its right to motion to reopen the record to supply additional documentation available following conclusion of the FTY on December 31, 2016.

3. Deductions from Rate Base

OCA inappropriately claims that the vacant home previously owned by a Water Treatment Plant ("WTP") Superintendent should be deducted from the City's Rate base. OCA Main Brief, p. 15. OCA claims that this residence is "vacant any is not used or useful for the provision of water

service." *Id.* at 16. OCA believes that because the City Manager recommended demolition of the house in July 2016, it must not have any useful future purpose for the City. *Id.* at 17; Tr. at p. 44, line 23 through p. 45, line 14. As such, OCA believes that the City lacks a definite plan of use with a specific period of time for the property, and cannot be included in the rate base.

OCA's proposed deduction exaggerates the impact of the City Manager's prior recommendation. Although the City Manager suggested demolishing the vacant property back in July 2016, the City Council took no such action and preserved the vacant property for future use. Tr. at p. 45, lines 11-12.

Further, the situation is not analogous to that observed in *Pa. PUC v. West Penn Power Co.*, 1979 Pa. PUC LEXIS 37 (Aug. 23, 1979 and Aug. 27, 1979), where the Commission addressed the appropriate treatment of an approximately \$14 million expense claim for newly acquired plant that had not yet been placed in service. *See West Penn*, at *38 (concerning "items of plant which are purchased in anticipation of a construction project or utility use."). The circumstances concerning the vacant home property differ significantly as the home was just recently vacated and remains available for use.³ Therefore, deducting this property from the rate base is premature and unfounded at this time.

4. Conclusion

OCA is the only party that proposes adjustments to the City's proposed additions and deductions from the rate base. As demonstrated above, OCA's assumptions have questionable

³ OCA also references *Application of Duquesne Light Co.*, 1998 Pa. PUC Lexis 167, *149 (Mar. 18, 1998), for the proposition that "[p]lant that is used and useful today could become not used and not useful tomorrow." The referenced citation addresses arguments related to billing mechanisms and does not correspond to, or in any way support, OCA's averment as to rate base. *See id.* Accordingly, this statement must be disregarded.

basis and cannot be adopted by the PUC. Accordingly, all of the City's adjustments to its rate base are appropriately calculated and the PUC should accept them without modification.

B. Revenues

Only Sandy Township seeks adjustments to the City's proposed revenues. As evidenced by the acceptance of the City's proposed revenues by all other parties, the City's proposed revenue requirement accounts all appropriate FTY revenues. Sandy Township's proposed revenue adjustments consist of self-serving and highly unreasonable efforts to shift its cost of service onto other jurisdictional customers and/or the City's inside customers. As discussed at length below, Sandy Township has provided no credible grounds for its proposals to impute revenues from sales to a potential future customer (Falls Creek), a uniquely situated contract customer (Union Township), or a non-jurisdictional contract customer (the Borough of Sykesville). Accordingly, Sandy Township's proposed revenue adjustments must be dismissed.

1. Falls Creek

a. Sandy Township Position on Falls Creek

Sandy Township misleadingly suggests that the City improperly excluded revenue for water service to Falls Creek in its rate filing. Sandy Township Main Brief, p. 6. Despite a clear record demonstrating that sales to Falls Creek will certainly not be realized in the FTY and may never materialize, Sandy Township erroneously alleges that such revenue should be considered in determining the rates and charges for the City. *See id.* As evidenced below, Sandy Township's proposal would violate longstanding ratemaking principles underlying the regulatory compact between the Commission and public utilities subject to its jurisdiction. The PUC should, therefore, disregard Sandy Township's unjustified claims related to a potential future service contract between Falls Creek and the City.

Sandy Township's proposal to recognize revenues from unknown and unmeasurable sales to Falls Creek lacks any basis in fact and would be extraordinarily premature. As conceded in Sandy Township's Main Brief, its proposal rests entirely on ongoing discussions and negotiations between Falls Creek and the City. *Id.* at 5-7. Based on press reports of discussions, innuendo, rumors, and other comments from Falls Creek officials, Sandy Township presumes that an interconnection will manifest at some point in the future. *Id.* As discussed at length in the City's Main Brief, Falls Creek and the City have not reached any disposition or agreement on any terms of service for the sale of bulk water. City Main Brief, p. 9. Even assuming an agreement would be reached at some time in the near future, the municipalities would need to obtain various approvals for the potential project and commence construction on the necessary facilities before completing an interconnection. *Id.* at 11.

As numerous outcomes could result from this process, including withdrawal from the City, unforeseen delays, or alternative arrangements between Falls Creek and another municipality, the future revenues from sales to Falls Creek remain speculative rather than known and measurable. *See id.* Therefore, imputing revenue for such potential future developments would contravene longstanding Commission precedent limiting revenue recognized for ratemaking purposes to those reasonably known and measurable. *Pa. Pub. Util. Comm'n. v. PPL Gas Utils. Corp.* 102 Pa. P.U.C. 325, **28-30 (2007) ("The Company's claim for expenses associated with the remediation of unknown sites is speculative, and fails the basic ratemaking tenet that expenses must be known and measurable in order to be recoverable."). Accordingly, Sandy Township's proposal to recognize revenues from potential sales to Falls Creek must be denied.

Furthermore, Sandy Township presents wildly speculative and unfounded calculations of "revenues" from sales to Falls Creek. Sandy Township Main Brief, pp. 6-7. Sandy Township

attempts to use a speculative rate referenced by a Falls Creek official in a newspaper article from May 7, 2016, to calculate projected revenues from sales of water to Falls Creek.⁴ *Id.* That article is nearly eight months old, and concerns only a potential inter-municipal agreement that has not yet been reached (and may never be reached). Consistent with the City's above argument and common sense, rates cannot be accurately calculated where parties have not yet agreed to terms of service, including whether a Falls Creek connection would be subject to the City's outside tariff rates, inside tariff rates, or a contract rate. Accordingly, Sandy Township's projected revenues to the City from a nonexistent arrangement with Falls Creek are inaccurate, speculative, and wholly premature.

For the reasons set forth above, the City respectfully requests that the Commission reject Sandy Township's allegations regarding Falls Creek.

b. Revenue Adjustment for Water Sales to Union Township

Sandy Township claims the City failed to abide by Section 507 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 507, by not filing a copy of its agreement with Union Township with the PUC and argues revenue from Union Township should be imputed at the standard tariff rates rather than the contract rate. This argument should be denied as inconsistent with the Public Utility Code and contrary to the public interest.

Sandy Township avers the Commission should impute revenue from Union Township at the full tariff rate, claiming:

⁴ The referenced newspaper article reports, based on a proposal prepared by Falls Creek officials, that DuBois will sell water at \$4.05 per 1,000 gallons to Falls Creek, which Sandy Township observes to be "the very same rate charged by the City to the Borough of Sykesville." Sandy Township Main Brief, p. 5. The City submits it is not unreasonable for Falls Creek officials to have knowledge of the City's contract rates as the City openly disclosed it has had discussions with Falls Creek representatives and, as evidenced by reporting of the \$4.05 contract rate in the rate filing, considers the information to be a matter of public record. *See* City Statement No. 2, Schedule 4. As with the remaining arguments from Sandy Township, this observation consists of irrelevant innuendo rather than any logical or credible reasoning.

With the Commission not having approved the below tariff rate, Sandy Township submits that it is appropriate under the circumstances to reflect revenue from Union Township at the full tariff level for ratemaking purposes and to assume the higher revenue level for the purpose of determining any rate increase that the Commission might allow for the City Water Bureau.

Sandy Township Main Brief, p. 8. Sandy Township's proposal is legally unfounded for numerous reasons. The proposal conflicts with the express language of Section 507 as the provision does not apply to inter-municipal contracts. Second, even assuming Section 507 would apply to the City, the Union Township contract would be exempt because the City filed the contract rate in each of its prior three rate cases, which qualifies the contract as a tariff rate per Section 102 of the Public Utility Code. Finally, if the Commission determines the Union Township contract to be subject to Section 507, the public interest would be served by invoking the Commission's authority under Sections 507 and 508 to approve the contract retroactively.

As evidenced by the plain language in the statute and supported by Commission precedents, Section 507 is inapplicable to the Union Township Contract. Section 507 provides:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof.

66 Pa. C.S. § 507.

As such, Section 507 applies to contracts between public utilities and municipal corporations. *Id.* The City is unaware of a prior instance where Section 507 has been invoked to review a contract between two municipal corporations. Although DuBois is a municipal

corporation subject to regulation as to rates under Section 1301 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1301, the Commission's authority to regulate rates charged by the City under Chapter 13 does not extend to the City's inter-municipal contracts.

Even if Section 507 is deemed applicable, the Commission has already approved the contract rate. The City has disclosed the contract rates charged to Union township in each of prior three rate proceedings. R-00963691; R-2013-2350509; R-2016-2554150, *et al.* Per the public utility code, a "tariff" includes "all schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates" 66 Pa. C.S. § 102. Therefore, because the City has previously filed the contract rates under the Union Township contract with the Commission, both through rate filings and proof of revenue submissions approved at Dockets R-00963691 and R-2013-2350509, it falls under the "tariff rate" exception of Section 507.

Even assuming the Commission exercises jurisdiction and conducts a Section 507 review of the Union Township contract, Sandy Township's proposal to impute additional revenues from Union Township should be rejected. The Union Township contract was made part of the record in this proceeding and therefore has been filed with the Commission. City Main Brief, p. 14. As the City has explained the rationale for the contract rate in this proceeding and in prior rate cases, the public interest would not be served by imputing revenue the City did not receive. City Statement No. 2-R, pp. 7-8.

As discussed in detail in the City's Rebuttal Testimony, "Union Township reasonably pays "a rate lower than the sale for resale rate charged for Sandy Township's service because Union Township and Sandy Township are not similarly situated customers . . . Sandy Township benefits from the City's treatment and distribution facilities, while Union Township benefits primarily from the City's treatment facilities." City Statement No. 2-R, pp. 7-8. Specifically "Union Township

constructed and paid for a water main extending from its system to a meter pit at the City's water treatment plant," while the City conversely extended outside facilities at "twelve (12) separate meter pits" to serve Sandy Township. *See id.* As a result, the City's contract with Union Township reasonably "includes an annual pricing formula excluding costs for infrastructure and services that do not benefit Union Township." *See id.* Clearly, the City has furnished a reasonable and fair basis for the contract rate previously filed with the Commission.

Accordingly, if the Commission deems it necessary to review the contract pursuant to Section 507, the Commission should find the City has adequately justified the contract rate charged to Union Township and invoke its authority under Sections 507 and 508 of the Public Utility Code to retroactively approve the contract as of January 1, 2014, or as otherwise deemed appropriate. 66 Pa. C.S. §§ 507, 508; *see also Apollo Gas Company v. Fred A. Heilman and Beulah May Heilman*, 1994 Pa. PUC LEXIS 30, *17 (Mar. 10, 1994) (finding Section 508 authorizes retroactive modification of contract terms). While the City submits this result is unnecessary for a contract rate previously filed with the Commission pursuant to Section 507, this alternative would further the public interest in comparison to the self-serving proposal from Sandy Township.

c. Sales of Water to the Borough of Sykesville

Sandy Township claims that the City violates Commission precedent by viewing its service to the Borough of Sykesville as jurisdictional because its interconnection with Sykesville is inside of the City's municipal borders. Sandy Township Main Brief, p. 13. This reckless and unfounded argument must be denied. Sandy Township claims that "the residence of the consumer . . . determines Commission jurisdiction under the Public Utility Code, not the location of the interconnection." *Id.* at 13-14. This interpretation is wholly inconsistent with well-established case precedent.

Under Section 1301 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1301, the PUC only has jurisdiction to regulate "public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation,⁵ beyond its corporate limits." 66 Pa. C.S. § 1301; *see also* 66 Pa. C.S. § 1102 (delineating acts requiring a certificate of public convenience) and 66 Pa. C.S. § 1501 (indicating that service furnished outside municipal boundaries is PUC-regulated as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility).

Even where a municipal corporation furnishes service beyond its corporate limits, the Commission must also determine whether the service provider held itself out as "in the business of supplying his product or service to the [indefinite] public." *Borough of Ambridge v. Pa. Pub. Serv. Comm'n.*, 108 Pa. Super. Ct. 298, 304 (1933); *see also* *Lehigh Valley Coop. Farmers v. City of Allentown*, 54 Pa. P.U.C. 495, 497-98 (Sept. 18, 1980) ("*Lehigh*") ("The test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals").

In addition to determining whether the utility in question serves the indefinite public, the PUC also considers other factors when deciding whether service is outside corporate limits and therefore non-jurisdictional, such as "(1) the source of consumer billing, (2) the authority to set consumer rates, (3) the authority to accept or reject new customer service, (4) the nature of the service rendered by the provider municipality, i.e. bulk/wholesale as opposed to individual/retail

⁵ The Public Utility Code defines "municipal corporations" broadly, and the term includes "cities . . . of this Commonwealth . . . for the purpose of rendering any service similar to that of a public utility." 66 Pa. C.S. § 102.

service, [and] (5) ownership of and control over extraterritorial facilities. . . ." *Petition of the Borough of Springdale for a Declaratory Order*, 63 Pa. PUC 3 , *6 (Oct. 21, 1986) ("*Springdale*") (citing *Re Chestnut Knoll Assocs.*, 1984 Pa. P.U.C. LEXIS 55 (Apr. 6, 1984); *Lehigh*, 54 Pa. P.U.C. 495 (1980); and *Petition of Borough of Middletown*, P-830466 (1984)).

The PUC "has traditionally regarded the provision of utility service by one municipality to another, whereby the line of the customer municipality connects to the line of the provider municipality within the latter's corporate limits, as nonjurisdictional." *See Lehigh*, 54 Pa. P.U.C. at 499 (citing *Borough of Brookhaven v. City of Chester*, 39 Pa. P.U.C. 472, 479 (1962)); *see also Springdale*, 63 Pa. PUC at *6.

In *Lehigh*, the City of Allentown ("Allentown") provided bulk/wholesale sewage service to adjacent municipalities and their authorities via agreements. *Id.* The PUC determined that Allentown was not rendering service beyond its corporate boundaries to the public for compensation because "the adjacent municipalities and their authorities are the direct customers of Allentown, and . . . the individual customers are ultimately served by these adjacent municipalities and their authorities [therefore] there is no basis to support a finding that Allentown is providing extraterritorial sewage service; accordingly, no basis exists for establishing [C]ommission jurisdiction." *Id.* at 500.

Here, the City provides bulk water service to the Borough of Sykesville via an interconnection located inside City limits. *Sandy Township Main Brief*, p. 13. Because this interconnection is located within the City, it is not within the PUC's jurisdiction. *Id.* at 479; *see also, Springdale* 63 Pa. PUC at *6. Accordingly, the Commission must dismiss the Sandy Township arguments.

C. Expenses

Sandy Township claims that it "supports the expense adjustments proposed by the Statutory Advocates." Sandy Township Main Brief, p. 9. It is unclear what Sandy Township intends from this statement as the respective State Advocates presented different, and at times conflicting, recommendations in this proceeding on expense adjustments. Regardless, the City addresses the respective proposals from I&E and OCA below.

I&E and OCA propose a series of adjustments to the City's claimed expenses in this proceeding based upon flawed assumptions. A few of the expense categories at issue include Unaccounted For Water ("UFW"), Billing and Payroll, Vacant Property, Rate Case, City Manager Salary, Transmission and Distribution ("T&D") Contractual Services, and Water Treatment Plant ("WTP") Contractual Services. As demonstrated below, the City's claimed expenses appropriately reflect the circumstances it faces in daily operations. The City furnishes high quality water service as evidenced by the lack of Formal Complaints before the PUC, the lack of residential customer participation in this rate case, and the customers' lack of interest in a public interest hearing. In order for the City to continue to provide such excellent service, the City must recover sufficient revenue in order to address the significant expenses it incurs in providing water service to the public. Therefore, the unreasonably severe expense adjustments proposed by the other parties should be denied in favor of the City's expense claims, which are designed to accurately reflect the FTY costs.

1. UFW

I&E recommends reducing the City's UFW expenses in this category by \$11,754 (\$3,615 jurisdictionally) due to allegedly excessive Unaccounted For Water percentages. I&E Main Brief, pp. 19-21. I&E claims that the City "has a steadily-increasing yearly average UFW" that causes "unwarranted pumping, treatment and transportation expense and reduces the amount of water

available to customers." *Id.* at 20. As a result of this analysis, I&E advocates for a downward expense adjustment in order to prevent ratepayer subsidies for excessive percentages. *Id.* at 21.

I&E's allegation of increasing UFW distorts the relevant data. The City's average UFW for the period 2013 to 2015 (26.69%) is substantially less than the City's average UFW for the period 2010-2012 (30.2%). City Main Brief, p. 15. By emphasizing the year-to-year fluctuations rather than the broader trend, I&E misrepresents the City's progress towards lower UFW rates. Such reduction indicates the City's substantial progress in and commitment to reducing UFW since its 2013 rate proceeding concluded. Since its last rate filing, the City regularly performed leak testing to reduce its UFW percentage. *See id.* at 16. The City also committed to meter all City buildings instead of using estimates, which will generate more accurate data on its UFW percentages. *See id.*

Additionally, through a Stipulation with the OCA, the City adopted numerous operational recommendations from OCA Witness Mr. Fought to further improve its UFW. *See City/OCA Stipulation.* Consistent with the City/OCA Stipulation, the City commits to performing the following tasks related to UFW⁶:

1. In future rate cases, the City will provide Unaccounted-For-Water ("UFW") calculations in the format shown on Exhibit TLF-1 that is used by water utilities in submission of their Annual PUC Reports.
2. Within six months of a final order in this case, the City will install water meters on all water service lines connected to the Public Works Garage, City Municipal Building, Waste Water Treatment Plant, Public Library, City Pool, and the five Fire Halls. The Water Treatment Plant may not need metering if the water is withdrawn prior to the metering of the flow into the distribution system.

⁶ The City/OCA Stipulation includes additional commitments unrelated to UFW. *See City/OCA Stipulation.*

3. Within two months of the final order in this case, the City will require each of the Fire Companies to submit a monthly written estimate of the unmetered water used and what it was used for.
4. Upon entry of a final order in this case, the City will estimate (at the time the repair is made) the water loss of each waterline/service line leak or break that was repaired.
5. Upon entry of a final order in this case, the City will provide metered location(s) for use by the street sweeper and fire companies for their non-firefighting uses.

City/OCA Stipulation, ¶¶ 1-8.

As set forth above, the City has made progress towards reducing its UFW and has further adopted even more aggressive measures to ensure continued progress towards reducing its UFW, which the Commission has previously held to mitigate against downward adjustments to UFW expense claims. *Pennsylvania Public Utility Commission, et al. v. City of Bethlehem (Water)*, 1995 Pa. PUC LEXIS 38, *58 (Mar. 16, 1995). Therefore, in recognition of the recent improvements and the City's additional commitments to further reduce UFW, I&E's proposed adjustment should be denied.

2. Overtime

I&E proposes adjusting Overtime expenses for Account 448.183 Water Treatment Plant and Account 450.183 Transmission & Distribution based upon a three-year historical average, resulting in downward adjustments of -\$3,741 and -\$9,749 for Accounts 448.183 and 450.183, respectively. I&E Main Brief, pp. 21-22. I&E claims that "this historical average more accurately predicts expenses and also ensures that ratepayers do not pay for overtime that will not actually occur" *Id.* at 22.

As detailed in the City's Main Brief, I&E's proposal ignores the clear upward trend of these expenses since 2013. City Main Brief, p. 18. Overtime expenses for Account 448.183 increased

by \$7,694 (these expenses rose from \$35,840 in 2013 to \$43,534 in 2015). *Id.* at 22. Likewise, Overtime expenses under Account 450.183 rose by \$11,703 (these expenses totaled \$22,694 in 2013 and amounted to \$34,397 by 2015). *Id.* The Commission has previously supported use of recent cost data over historical averages where the historical data demonstrates an upward trend rather than fluctuations. *Pennsylvania Public Utility Commission v Philadelphia Electric Company*, 1985 Pa. PUC LEXIS 67, *59, 58 Pa. PUC 743, 767 (Jan. 24, 1995). Therefore, as a result of the historical upward trend of these expenses, I&E's recommendation to average overtime costs over three years should be denied and the Commission should adopt the City's claim without modification.

3. Payroll/FICA Taxes

I&E originally recommended adjusting the City's payroll/FICA tax expense to reflect its adjustment to the City's wage and overtime expenses. City Main Brief, p. 19. While I&E ultimately accepted the City's proposed wage expense, I&E still recommends a downward adjustment of \$1,031 to the City's payroll/FICA tax expenses to reflect its adjustment to the City's Overtime expense claim. I&E Main Brief, pp. 22-23. Accordingly, because the City disputes I&E's recommended Overtime adjustment, the City also rejects I&E's payroll/FICA tax adjustment. City Main Brief, p. 19.

The Commission should grant the City's proposed payroll/FICA adjustment of -\$4,393 (-\$1,304 jurisdictional) and reject the I&E adjustment. *Id.*

4. WTP Contractual Services Expense

OCA suggests that it is more appropriate to normalize WTP Contractual Services expenses with the exception of "the herbicide application expense and the portion of the Watershed Inventory Management Plan" that is an annual expense that City Witness Heppenstall already normalized. OCA Main Brief, p. 23. OCA alleges that "two prior years of expenses indicate that

the 2015 level of expense was not normal and . . . [therefore] a three year normalization period be used for ratemaking purposes [because it is improper to annualize an expense that is not 'incurred on a level basis throughout the year']." *Id.* at 23-24.

I&E also recommends adjusting the WTP Contractual Services expense based upon a three-year average. I&E Main Brief, p. 23. I&E acknowledges that the City believes this methodology is not the best way to predict future expense for this category, but suggests the City offers "no other plausible theory to be relied upon." *Id.* This I&E assertion is simply untrue.

The City dutifully adjusted expenses under this account during the course of this proceeding, and the City provided actual expenses recorded to this account through September 30, 2016. City Main Brief, p. 20. The City actually incurred expenses as of September 30, 2016, while lower than total 2015 expense levels, were reasonably on target to match the 2015 expenses by December 31, 2016. *See* City Statement No. 2, p. 11. Accordingly, the PUC should adopt the City's comprehensive proposal regarding WTP Contractual Services expense and discuss the I&E proposal.

5. Transmission & Distribution ("T&D") Contractual Services Expense

OCA suggests there has been "significant fluctuation in this expense over the last three years" and accordingly recommends normalizing that expense. OCA Main Brief, p. 20. OCA believes that normalizing this expense permits the fluctuations to be "smoothed" so that the expense included in the revenue requirement suggests a normal annualized expense. *Id.* OCA believes that implementing its UFW recommendations would not require additional revenues. *Id.* at 21. OCA also believes that the City failed to demonstrate "it is reasonable to use the 2015 level of expense as the pro forma level of expense when it is more than nine times the prior year expense . . . [a]ccordingly, using a normalized level of expense is appropriate." *Id.*

Similarly, I&E suggests that the City's claim for T&D Contractual Services expense is "nine and a half times what was incurred in 2014." I&E Main Brief, p. 24 (emphasis removed). Based upon that assumption, I&E suggests that the City's T&D Contractual Services Expense is a "wildly variable expense which must be averaged to smooth out fluctuations for ratemaking purposes." *Id.* As such, I&E suggests "[r]elying exclusively upon the highest of the past three years, as proposed by the City, would not be a fair representation and would unduly burden ratepayers" and a historical average is more accurate in predicting expenses under this account. *Id.* at 24-25.

I&E's and OCA's proposed adjustments to this expense category conflict with the general consensus that the City should not just continue its prior efforts, but also escalate measures to combat UFW. *See* City Main Brief, pp. 20-21. This expense category is directly correlated to such efforts, as the City's records contractual costs related to "water leak detection, water line break repairs, GIS mapping, road work, patching and paving concrete, etc.," all under the T&D Contractual Services expense. City Main Brief, p. 21. Therefore, the City will undoubtedly continue to accrue higher T&D contractual services expenses in the future.

Although I&E's and OCA's recommendations may be reasonable for other utilities under different circumstances, firm adherence to a three-year averaging or normalization methodology for this expense would not appropriately capture the City's projected T&D contractual expenses. Accordingly, the City's recommended T&D contractual service expense should be approved.

6. Rate Case

I&E and OCA propose 5.33-year and 5-year normalization periods for the City's rate case expense out of an overly formulaic approach to the normalization process. As indicated in its Main Brief, the City understands that normalization of rate case expense over a period of several years is appropriate in recognition of the fact that benefits from rate cases accrue over time. City Main

Brief, p. 21. However, imposing an "unreasonably long normalization period, particularly for a smaller utility seeking a relatively modest rate increase, will jeopardize the utility's financial viability by effectively denying recovery of actually incurred rate case expense." City Main Brief, p. 21. Accordingly, the City avers that a 2.5-year normalization period acknowledges the fact that rate case expense should be spread over a period of years and allows the City to recover rate case expense in a reasonable amount of time. City Main Brief, pp. 21-22. To the contrary, the I&E and OCA proposals would ignore the City's filing history and eviscerate its prospects for reasonable and timely recovery of its rate case expense, particularly in light of the necessity to address voluminous briefs filed by all parties (including 321 Findings of Fact proposed by OCA).

I&E claims that its proposed normalization period is "founded upon historical data and evidence, unlike the City's proposal." I&E Main Brief, p. 19. However, as the City indicated in its Main Brief, I&E's misguided recommendation assumes rate case expense must be limited to a rigid and mathematical calculation of the average interim period between a utility's prior three rate cases. To the contrary, and as stated in the City's Main Brief, the Commission also considers the impact of additional historical circumstances in determining the appropriate rate case normalization clause. See City Main Brief, pp. 22-23 (citing to *Pa. Pub. Util. Comm'n. v. Lemont Water Co.*, 1994 Pa. P.U.C. LEXIS 44, *18-19 (1994)).

Critically, the City has furnished information explaining the eight-year gap between its 2005 and 2013 rate cases, which I&E has inexplicably refused to consider. The City filed rate cases in 2005, 2013, and 2016, which does produce an average normalization period of 5 years. City Main Brief, pp. 22-23. However, the reason why the City avoided a rate case between 2005 and 2013 was because it incurred "unanticipated revenues from sales of water to shale gas companies . . . during this period." City Main Brief, p. 23. The City does not expect such sales to

recur pursuant to correspondence from the industry indicating no expectation for further purchases. *See* City Statement No. 2-R, p. 6. Therefore, the PUC should accept its recommendation for a shorter normalization period.

In addition, and as detailed in the City's Main Brief, I&E's recommendation relied upon an inaccurate assumption about the current state of the City's 2013 rate case expense. Main Brief, p. 24. I&E's witness claimed that City's assertion that it "has only recovered 40% of its prior rate case expense as of October 2016 is speculative" because the City had no data for the 2013 rate case expense. OCA Main Brief, pp. 23-24. However, the City provided that expense (\$410,291) in discovery to the parties. OCA Main Brief, p. 24. Had I&E considered the full extent of the City's expenses incurred from its 2013 rate case, it would realize that the City cannot reasonably recover its rate case expense under a 5.33-year normalization period.

Like I&E, OCA believes that the City should normalize its rate case expense over a longer term than 2.5 years. OCA believes that the recent history of the City's rate filings, and expectations of the City's future filings, factor into its suggested 5-year normalization period. OCA Main Brief, p. 40. However, like I&E, OCA fails to account for the City's water sales to shale gas companies, which are not anticipated to recur. Accordingly, like I&E, OCA applies the Commission's policy favoring determination of rate case expense based on historical filing frequency with excessive rigidity by refusing to consider the period between 2005 and 2013 as an outlier.

The Commission should further consider the conservative nature of the City's claimed rate case expense, which will likely exceed projections based on the extensive issues briefed by all parties and the necessity for the City to review and respond to the three hundred and twenty-one

(321) individual findings of fact proposed by the OCA, which the City submits collectively exceeds the briefing expectations for a rate case involving only a proposed increase of \$229,551.⁷

For the above reasons, the City should not be forced to under-recover its rate case expense, which would occur under either I&E's or OCA's recommended normalization periods. As such, the Commission should approve the City's proposed 2.5-year normalization period and reject the OCA and I&E recommendations.

7. WTP Vacant Property

Just as OCA disputes the City's inclusion of the vacant WTP Supervisor's residence in the City's rate base, OCA also disputes the City's inclusion of this residence in its expenses. OCA avers that because the City Manager advocated to demolish this house, and because the property is "not used or useful for the provision of water service, the expenses related to this home should be removed." OCA Main Brief, p. 19.

The City's proposes to keep this residence in its expenses for the same reason it proposes to keep this house in its rate base. Accordingly, for the same reasons set forth above in Section IV(A)(3) of this Reply Brief, the property remains available for use. *See* Section IV(A)(3) *infra*. Therefore, OCA's proposed adjustment must be denied and the City's proposed WTP Vacant Property expense claim should be approved without modification.

8. Administrative and General ("A&G") Expenses

OCA takes issue with the City's proposed allocation of administrative expenses to the Water Fund. OCA Main Brief, p. 34. As explained in its Main Brief, the City "does not directly allocate Administrative and General Expenses to the Water Fund, rather those expenses are

⁷ By way of comparison, in the last rate case litigated by Aqua Pennsylvania, Inc. ("Aqua") at PUC Docket No. R-00072711, Aqua requested \$41.7 million (or 181x the City's request for \$229,551), and the OCA brief in that case proposed 277 Findings of Fact (44 fewer than the 321 Findings of Fact proposed in this case).

imputed to the Water Fund in the rate filing in order to recover those expenses related to providing water service to the water customers." City Main Brief, p. 25.

In reviewing the City's A&G expenses, the Commission should examine the City's ratio of A&G to total O&M costs as one indicator of reasonableness in addition to more specific indicators offered by the City. As noted in the City's testimony, "A&G Costs for the City of \$632,304 are approximately 31.1% of total O&M expenses, or \$1.28 per 1000 gallons." City Statement No. 2-R, p. 14, lines 22-23, and p. 15, lines 1-2. Contrary to OCA's assertions, the City believes it is important to consider that its Water Fund A&G expenses "based on percentage of total operation and maintenance costs and dollar amount per 1,000 gallons are comparable to other Pennsylvania water utilities." City Statement No. 2-R, p. 15, lines 10-12. As such, the City's A&G expenses are appropriately calculated and should be adopted without modification.

9. Allocation of City Manager Salary

Predictably, and misguidedly, both I&E and OCA dispute the City's proposed allocation of expenses relating to the City Manager's salary. OCA and I&E each recommend allocating 24% and 25% of the City Manager's salary to the Water Fund, respectively. OCA Main Brief, p. 24 and I&E Main Brief, p. 16. As demonstrated below, both recommendations should be denied.

I&E alleges that the City lacks support to justify allocating 60% of the expense for the City Manager's salary to the Water Fund. I&E Main Brief, p. 13. First, I&E presupposes that City witness Ms. Heppenstall "has no direct basis to testify regarding Mr. Suplizio's salary allocation." I&E Main Brief, p. 13. This statement is entirely incorrect. As an expert witness for the City, Ms. Heppenstall is offering the basis for her allocation of the City Manager's salary to the Water Fund. Ms. Heppenstall testified that she spoke with the City Manager and subsequently applied a 60% allocator to capture his work on the water system. City Statement No. 2-R, p. 17, lines 6-7. The City Manager corroborated Ms. Heppenstall's statement by concurring that her selected

allocator reflects his ongoing work on water system issues. Tr. at p. 33, line 2. Accordingly, Ms. Heppenstall has a firm and credible basis for her proposed allocation of the City Manager's salary in form of sworn testimony from an active witness in the proceeding.

I&E also asserts the City failed to offer time sheets for the City Manager and that the City Manager's job is "entirely separate and unrelated to how the City Manager would spend his working hours." I&E Main Brief, p. 13. I&E claims case precedent demonstrates the PUC cannot accept Mr. Suplizio's estimations of how he personally spends his time as City Manager in his daily operations. I&E Main Brief, p. 14 (citing *Pennsylvania Pub. Util. Comm'n. v. Borough of Quakertown*, Docketed R-2011-2251181 (2012) ("*Quakertown*"); *Emporium Water Co. v. Pennsylvania Pub. Util. Comm'n.*, 955 A.2d 456 (Pa. Commw. Ct. 2008)). In lieu of accepting Mr. Suplizio's testimony as to how *he* conducts his time as City Manager, I&E recites the *general job description* for the City Manager and mistakenly assumes that it serves as an appropriate proxy for describing Mr. Suplizio's actual day-to-day responsibilities. I&E Main Brief, pp. 14-15. And in support of its decision to use the general job description as a proxy, I&E cites to *Pennsylvania Pub. Util. Comm'n. v. Borough of Media Water Works*, 72 Pa. P.U.C. 144 (1990).

I&E's analysis in this regard is fundamentally flawed and relies on inapplicable case precedent. First, *Borough of Quakertown* involved a situation where a finance director testified as to the job description of a City Manager, *not* a situation where a City Manager testified as to his own daily responsibilities. The Commission in that case observed as follows:

Quakertown admits that it has performed no formal cost allocation study as part of its determination to allocate 25% of the general fund costs to the water department. N.T. 131. The 25% allocation is based on the judgment and knowledge of Quakertown's director of finance. N.T. 131. *The finance director testified that she has daily interaction with all phases of Quakertown's daily operations, including the water department.* N.T. 132. The costs that are included in the claim are different from, and in addition to the costs,

incurred for water department personnel whose costs are included in the water department's expense claims. N.T. 132.

This is simply insufficient evidence to support the \$57,350 claim. *There are no time sheets demonstrating how many hours the elected officials, the borough manager, his executive secretary, finance department or mechanics spend performing work for the water department.* Similarly, there are no invoices for copying, public meeting advertising, or office supplies for the water department. If this information were available, it might support the financial director's 25% allocation. In the absence of any of this information, the 25% allocation is an estimate without any factual basis.

Borough of Quakertown, 2012 Pa. P.U.C. LEXIS 1102, *25-26 (emphasis added). Conversely, in the City's case, the City Manager himself testified under oath as to *his* estimate of *his* time. Mr. Suplizio confirmed, on the record, that most of his responsibilities mirror those of the Public Works Director and that he often accompanies the Public Works Director on water operations projects and repairs. Tr. at p. 37, lines 5-12.

Further I&E also misrepresents Mr. Suplizio's job description. I&E's Main Brief purports to describe Mr. Suplizio's responsibilities, but omits citations to any part of the transcript from the November 10, 2016, evidentiary hearing or Mr. Suplizio's testimony. I&E Main Brief, pp. 14-16. It appears that I&E neglected to cite its false narrative of Mr. Suplizio's job responsibilities because Mr. Suplizio never described such duties. *See id.* Rather, I&E represented the general City Manager job description as a direct proxy for Mr. Suplizio's day-to-day activities, which is inappropriate where the witness provided testimony and was made available to I&E for cross-examination. As Mr. Suplizio testified on the record regarding his City Manager duties, the City's claim regarding City Manager salary allocation is based upon known, measurable, and reasonable expenses. *Emporium Water Co.*, 955 A.2d at p. 465.

Finally, the City would like to note that it could not locate the basis for I&E's assertion that *Borough of Media* indicates "the Commission has previously refused to accept salary allocations

when the position description and the purported allocation do not synchronize, such as the case at hand." I&E Main Brief, pp. 15-16. The pincite referenced by I&E does not support the stated claim.⁸ Accordingly, I&E's criticisms and recommendations are unsubstantiated and must be rejected.

I&E also suggests that the PUC order the City Manager to maintain timesheets or other means of tracking and allocating his time. *Id.* For the reasons set forth above, the Commission must disregard recommendations posed by I&E. Regardless of the preference for ratemaking purposes, such matters fall squarely within the City's managerial discretion and additional administrative obligations not be arbitrarily imposed upon the City outside of the Commission's rulemaking process. Accordingly, I&E's proposal to require the City Manager to keep time sheets should be disregarded.

OCA also presents flawed adjustments to City Manager salary allocations based upon entirely irrelevant caselaw. OCA suggests allocating 24% of the City Manager's salary to the Water Fund because of a perceived lack of information provided by the City. OCA Main Brief, p. 26. This is untrue. Similar to I&E, OCA avers the City Manager's testimony as to his daily employment duties is speculative and inaccurate solely because he did not keep time sheets. OCA Main Brief, p. 30. In support of its allegation that the City failed to provide evidence of managerial expenses, OCA cites *Popowsky v. Pa. PUC*, 674 A.2d 1149 (Pa. Commw. 1996) ("*Popowsky*"),

⁸ I&E's pincite references pages 24-25 of *Borough of Media*, but there are no pages labeled "24" or "25" when one examines the decision. *Borough of Media* concerned generalized salary allocations applied to all of the subject municipality's supervisory and treatment employees. Moreover, in *Borough of Media*, none of the actual employees performing work for the water system testified as to duties related to water operations, as only the Mayor appeared as a witness. *Borough of Media*, 72 Pa. PUC at 11-12. For this reason, the Commission approved a lower (albeit still 50%) salary allocation for the supervisory staff not merely because of the claims the job descriptions did not match the allocation, but because there was "a complete absence of probative evidence as to how these employees' salaries should be allocated." *Id.* at 11. To the contrary, 60% allocation at issue here concerns only the City Manager expense, for which the City Manager himself appeared as a witness and provided supportive testimony.

Pa. PUC v. LP Water and Sewer Co., 1993 Pa. PUC LEXIS 149 (1993) ("*LP Water*"), and Section 2106 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2106, each of which are inapt and inapplicable to the case at hand. *See* OCA Main Brief, pp. 27-28.

Contrary to the present circumstances concerning allocation of a salary between municipal departments, Section 2106 and *Popowsky* address solely situations where a utility company benefits from management services provided by a parent organization, which is subject to Chapter 21 of the Pennsylvania Public Utility Code regarding affiliated entities. Similarly, as OCA indicates, *LP Water* involved a company's attempt to claim "a management expense *from its parent*, Lehman Pike Development Corporation (LPD), which was ultimately denied by the Commission." OCA Main Brief, p. 28 (emphasis added). Accordingly, *Popowsky*, *LP Water*, and Section 2106 are entirely inapplicable to the City because the circumstances of the utilities in those cases do not mirror the City's situation.

Furthermore, like I&E, OCA also cites to *Borough of Media* for the point that the City lacked evidentiary support for its 60% allocation factor and proceeds to use a general job description for the City Manager as a proxy for determining Mr. Suplizio's actual daily activities. OCA Main Brief, pp. 28-31. For the same reasons set forth above in response to I&E's arguments, the Commission should reject OCA's misplaced reliance on *Borough of Media*.

OCA also attempts to impeach the City's testimony as to Mr. Suplizio's salary allocation, alleging Ms. Heppenstall contradicts herself and the City manager's testimony by claiming "the actual total percentage of time the City Manager spends on water according to City witness Heppenstall is 55.7%." OCA Main Brief, p. 33. This argument completely ignores the facts on the record. As demonstrated above, the City Manager earns \$124,076 per year. 60% of that figure (\$65,525) is allocated to water operations and 24% of that salary (\$14,868) is allocated to Finance

Salaries. City Statement No. 2-R, p. 16, lines 9-17. Of the \$14,868 allocated to Finance Salaries, 24% (\$3,568), is allocated to the Water Fund. *Id.* As a result, when one computes the sum of \$65,525 and \$3,568, and divides that sum by the total salary (\$124,076), it reveals that the total percentage of the City Manager's salary allocated to the Water Fund is 55.7%. *Id.* Accordingly, when Ms. Heppenstall indicates 60% of the City Manager's salary is allocated to the Water Fund, she is not contradicting herself, but rather referring only to the contested portion of the City Manager's overall salary allocation, since no party contests the 24% allocation of the City Manager's finance-related salary. *Id.*

Accordingly, the City Manager provided support for Ms. Heppenstall's 60% allocation of his operational salary by testifying as to his job functions and daily responsibilities. While the Commission requires additional documentation to verify expenses incurred between sophisticated corporate affiliates, this standard should not extrapolated to the instant case. Further, no party opposes the 24% allocation of the City Manager's salary related to financial duties. Accordingly, the City's proposed allocation of the City Manager's salary must be approved.

10. Allocation of Health Insurance and Other Benefits for Administrative Employees

As a result of its recommendation regarding the City Manager's salary, I&E proposes a "corollary adjustment" to this expense category. Specifically, I&E suggests adjusting "this allocation down in the amount of \$1,592 in order to synchronize these Health Insurance Expenses with the salary allocation." I&E Main Brief, p. 17. I&E also proposes that the expense for Other Benefits must be adjusted "downward in the amount of \$6,847." I&E Main Brief, p. 17.

In addition, I&E presupposes that the City's proposed allocation of Administrative Benefits expenses is not substantiated by the evidence, and the PUC should adopt an allocation factor of

33.37% for such expenses. I&E Main Brief, p. 17. I&E alleges that this allocation prevents subsidizing administrative expenses for other city services. I&E Main Brief, p. 18.

The PUC should reject I&E's proposals for this expense category. As set forth above, I&E and the City disagree on allocation of the City Manager's salary to the Water Fund. Accordingly, consistent with its recommendation to deny I&E's unsubstantiated adjustment to the allocation of the City Manager's salary, the City recommends that the Commission adopt its proposed allocation of Health Insurance and Other Benefits for Administrative Employees, as revised by City Statement No. 2-R and its Rejoinder Exhibit, Exhibit_(CEH-3RJ). City Main Brief, p. 29.

11. City Buildings/Computer Parts/Supplier Software

The City believes it is appropriate to allocate expenses for Computer Parts/Supplies/Software as part of the City Buildings expense in the imputed Administrative Expense based on actual expense incurred in HTY (2015). See City Statement No. 1, Exhibit_(CEH-1), p. 25. Conversely, OCA recommends that the City normalize the average expense recorded in this account for 2013, 2014, and 2015 because in 2015, the City incurred expenses that are "significantly higher than a normal year of expense." OCA Main Brief, p. 38. OCA alleges that the City has not offered any explanation as to why this expense "more than doubled." OCA Main Brief, p. 38.

The City disagrees with OCA's proposal. Under Schedule 5 for Account 409.316 Computer Parts/Supplies/Software (located in Exhibit_(CEH-4R)), most of the expenses in this account are ongoing expenses related to the City's information technology needs. The City cannot operate without these technologies. See City Main Brief, p. 30. The City experienced and supported consistent increases in this type of expense since 2013, and as a result, OCA's proposal to normalize these costs is inappropriate. *Id.* To properly account for the upward trend in this expense category, the PUC should base its expense allowance for Computer

Parts/Supplies/Software upon the increased expense level incurred in 2015. *Id.* As a result, OCA's adjustment should be rejected.

D. Rate of Return⁹

1. Introduction

Sandy Township claims that it "supports the rate of return adjustments proposed by the Statutory Advocates." Sandy Township Main Brief, p. 10. It is unclear what Sandy Township intends from this statement as the respective State Advocates presented different, and at times conflicting, recommendations in this proceeding on rate of return adjustments. Regardless, the City addresses the respective proposals from I&E and OCA below and in its Main Brief.

I&E and OCA both reinforce the rate of return recommendations made in each parties' respective testimony statements and summarized in the Bureau of Water's Main Brief. Generally, these recommendations arise from flawed interpretations of Commission precedents and a failure to appropriately consider that all parties are best served by allowing a reasonable rate of return on the Bureau of Water's investment in public utility infrastructure. The recommended returns on equity and overall rates of return developed by I&E and OCA fall woefully short of returns allowed by the Commission in recent cases and would amount to confiscatory rates for the Bureau of Water.

For these reasons, the Commission should approve the capital structure, cost of equity, and overall rate of return proposed by the Bureau of Water. *See* City Main Brief, Appendix A.

2. Legal Standard

All of the parties generally cite to the same cases for the applicable legal standards for the Commission's rate of return determination. As detailed in the City's Main Brief, the City concurs

⁹ For purposes of this section on rate of return issues, the Bureau of Water will be referenced as a separate entity from the City. *See* City Statement No. 4, p. 1.

that *Bluefield Water Works & Improvement Company v. P.S.C. of West Virginia*, 262 U.S. 679 (1923) ("*Bluefield*") prescribes the applicable principles requiring the Commission to grant a rate of return sufficient to ensure confidence in the financial soundness of a utility and reflect the returns earned by investments in other business undertakings attended by the same risks and uncertainties. *See* City Main Brief, p. 33.

However, both I&E and OCA parties adopt an excessively narrow view of Commission case law, particularly with regard to the Commission's capital structure findings in *City of Lancaster – Bureau of Water v. Pennsylvania Public Utility Commission*, Docket No. R-2010-2179103 (Order entered July 14, 2011) ("*Lancaster 2010*"). As previously established by the Commission case, the rate of return analysis is highly dependent upon a fair assessment of the attending circumstances. *See Pa. PUC v. Pennsylvania Power Co.*, 55 Pa. PUC 552, 579 (1982) ("*Penn Power*") (stating "there is no one precise answer to the question as to what constitutes the proper rate of return.").

Accordingly, where I&E and OCA attempt to characterize the rate of return analysis as a relatively simple and formulaic exercise, the Commission should continue its longstanding policy and exercise appropriate judgment in order to arrive at a reasonable rate of return to support the Bureau of Water's public utility operations.

3. Capital Structure

a) *I&E and OCA hypothetical capital structures should be rejected*

I&E and OCA present deeply flawed capital structure analyses that should be rejected in favor of the Bureau of Water's recommended capital structure. Neither I&E nor OCA corrected their hypothetical capital structures to address clear technical flaws. Additionally, and contrary to Commission precedent, both I&E and OCA recommend capital structures failing to appropriately balance the interests of the utility and the consumers. Rather, both parties narrowly focus on reducing costs to consumers at the expense of providing a rate of return sufficient to support the Bureau of Water. For these reasons, the Commission should reject the I&E and OCA proposed capital structures and approve the Bureau of Water's recommended capital structure of 50% debt and 50% equity.

(1) **I&E and OCA Failed to Address Technical Flaws Invalidating Their Capital Structure Recommendations**

The 70% debt/30% capital structure ratios proposed by I&E and OCA should be disregarded as technically flawed and/or invalid. First, while purporting to base their capital structures on the actual financing of the Bureau of Water's rate base, both I&E and OCA calculated the debt funding allocated to the Bureau of Water to include approximately \$663,868 of debt issuance discounts and expenses. *See* I&E Main Brief, p. 28; *see* OCA Main Brief, p. 55; *but see* City Main Brief, p. 37. Because these monies are not actually available to fund rate base, the inclusion overstates the Bureau of Water's debt ratio. Correcting for this error would change the proposed 70% debt/30% equity capital structure to a 67% debt/33% equity capital structure. *See* City Main Brief, p. 37.

The second technical flaw relates to the general inappropriateness of basing a hypothetical capital structure on the method of funding rate base at a given point in time with much of the debt approaching maturity. Both I&E and OCA based their 70% debt/30% equity capital structures on the Bureau of Water's outstanding debt as of December 31, 2016. *See* I&E Main Brief, p. 27; *see also* OCA Main Brief, p. 52. However, as discussed in the Bureau of Water's Main Brief, the long-term debt consists of S&T Bank Notes soon approaching maturity. *See* City Main Brief, p. 38. As described by Mr. Walker, the pending debt maturities, "means the debt allocated to the City of DuBois matures at twice the rate that utility plant is depreciated, resulting in an increasing equity ratio over time." *See* City Statement No. 4-SR, p. 6. Specifically, the increasing equity ratio would impact the I&E and OCA capital structure recommendations as follows¹⁰:

Impact of Debt Maturities on I&E and OCA Capital Structures¹¹		
	I&E Proposed Capital Structure	OCA Proposed Capital Structure
2017	65% debt/35% equity	62% debt/38% equity
2018	62% debt/38% equity	60% debt/40% equity
2019	60% debt/40% equity	57% debt/43% equity
2020	57% debt/43% equity	34% debt/46% equity
2021	54% debt/46% equity	52% debt/48% equity

As a result of the increasing equity ratios, adoption of the I&E and OCA recommended capital structures would reflect the Bureau's rate base financing only for a brief period, before

¹⁰ Although both propose a 70% debt/30% equity capital structure, the detailed I&E and OCA capital structure calculations differ slightly as OCA used a rate base calculation including a cash working capital adjustment, while I&E used an unadjusted rate base calculation. *See* City Statement No. 4-R, pp. 5, 8. Additionally, the above-referenced capital structures incorporate the City's corrections for inclusion of \$663,868 of debt issuance discounts in the parties' calculations of rate base funded by debt. *See* Section IV(A)(1), *infra*.

¹¹ *See* City Statement No. 4-R, Attachment 1.

maturity of the S&T Bank Notes reduces the debt ratio to approximately 60% by December 2018 and approximately 52% by December 2021. *See* City Main Brief, p. 38. Importantly, this issue was not addressed by the Commission in prior precedents where the Commission based prior capital structure recommendations on the method of financing rate base. *See Pa. PUC v. Emporium Water Co.*, Docket No. R-00061297 (June 4, 2008); *see also Pa. PUC v. Western Utilities, Inc.* 88 Pa. PUC 124 (1998). Therefore, the Commission must distinguish the instant situation from these precedents and deny the proposed 70% debt/30% equity capital structure for failure to reasonably reflect the Bureau of Water's financing of its rate base.

(2) The I&E and OCA Capital Structures Rely on Precedent Distinguishable from the Instant Case

The I&E and OCA recommended capital structures rely on a flawed and overly narrow interpretation of Commission precedent. I&E and OCA rely heavily on the Commission's findings in *Lancaster 2010*, where the Commission adopted use of the utility's actual capital structure and declined to use a hypothetical capital structure. *See* I&E Main Brief, p. 28; *see* OCA Main Brief, p. 56. However, I&E and OCA overstate the relevance of *Lancaster 2010* to this proceeding, in contravention of the well-established tenet that a rate of return analysis shall be performed on a case-by-case basis in order to balance the interests of the utility, its investors, and the customers. *See Penn Power*, at 579. As discussed in the Bureau of Water's Main Brief, significant differences distinguish the present circumstances from those at issue in *Lancaster 2010*, thereby limiting the applicability of the Commission's findings.

First, the scope of the rate filings alone separates the instant proceeding from that in *Lancaster 2010*. In *Lancaster 2010*, the municipality sought to increase rates by 100%, resulting in a jurisdictional increase of \$8.6 million dollars. By way of comparison, the Bureau of Water

proposed a 33.6% rate increase of \$257,604, which has since been adjusted to \$229,551. *See City Main Brief, p. 5.*

Second, I&E and OCA fail to note the Commission in *Lancaster 2010* acknowledged use of a capital structure differing from market norms to necessitate an appropriate upward adjustment to the cost of common equity. *See Lancaster 2010, p. 73* (establishing that "a higher cost of equity is necessitated by our adoption of the City's actual capital structure."). In this case, as neither I&E nor OCA has proposed to adjust their cost of common equity recommendations consistent with their determination to use a capital structure, their recommended capital structures should be dismissed outright for failure to reflect the appropriate balance of the interests of the utility and its customers. *See City Main Brief, p. 41.*

Because I&E and OCA proposed capital structures based on the outcome of *Lancaster 2010*, without regard for critical inconsistencies between the facts and findings from *Lancaster 2010*, their recommended capital structures must be dismissed.

4. Cost of Common Equity Calculation

a) I&E and OCA Criticism of the Bureau of Water's Reliance on Multiple Cost of Equity Calculations Lacks Merit

OCA and I&E's common equity costs rate recommendations conflict with the Commission's preference for reliance on multiple return on equity analyses. As stated in the Bureau of Water's Main Brief, the Commission has approved returns on equity incorporating Discounted Cash Flow, ("DCF"), Capital Asset Pricing Model ("CAPM"), and Risk Premium methodologies, and supports use of alternative equity costs calculations as a check on the DCF. *See City Main Brief, p. 45.*

OCA cites to stale cases disfavoring CAPM and Risk Premium methodologies, but ignores more recent Commission precedent supporting use of these methodologies in conjunction with the

DCF. *See* OCA Main Brief, p. 60 *citing* *Roaring Creek 1995* but *see* City Main Brief, p. 45 *citing* *Pennsylvania Public Utility Comm'n v. Emporium Water Company*, PUC Docket No. R-2014-2402324 (Order entered Jan. 28, 2015). I&E similarly criticizes the Bureau of Water's reliance on CAPM and Risk Premium analysis, while ironically and inconsistently referencing its own CAPM analysis as a credible check on its DCF results. *See* I&E Main Brief, pp. 29, 35.

Both positions should be rejected in favor of the Bureau of Water's recommendation incorporating the results of multiple cost of equity calculations.

b) The DCF Results from I&E and OCA are Invalid and Must be Rejected

While heavily citing to the Commission's past reliance of DCF analyses, I&E and OCA both propose DCF calculations contrary to Commission precedent. The I&E and OCA growth rate inputs, which form the critical component of the DCF analysis measuring investor expectations for appreciation of share prices, diverge from established ratemaking principles. *See* City Main Brief, p. 45. Simply put, the Bureau of Water is the only party utilizing a growth rate similar to that relied upon by the Commission in *Lancaster 2010* and other recent proceedings. *See Lancaster 2010*, pp. 64, 66, 68-69. Specifically the Bureau of Water appropriately developed a growth rate based on historic and projected growth rates published by market analysts. *See* City Main Brief, p. 45. To the contrary, OCA relied on a growth rate derived from unpublished "indicators," while I&E developed a growth rate based on limited market data.

OCA's growth rate does not accurately reflect investor expectations because it was drawn from internal sources rather than published growth rates relied upon by investors. As stated by Bureau of Water Witness Harold Walker, OCA's witness "subjectively ignored the investor influencing growth rates of security analysts and instead, calculated her own growth rates." *See* City Statement No. 4-R, p. 30. Unlike the published growth rates relied upon by the Bureau of

Water, OCA's growth rates cannot reflect market expectations because "investors' expectations of expected future growth are not based upon Ms. Everette's unique growth rates; they are based on investors' expectation of expected future growth." *See* City Statement No. 4-R, p. 30. Therefore, the OCA's flawed growth rate calculation invalidates its DCF calculation and require rejection of its cost of common equity recommendation.

I&E's growth rate suffers from a cherry-picked sample of published growth rates. I&E calculated a 6.31% growth rate based solely on a review of forecasted Earnings Per Share growth rates for its comparable group. City Main Brief, p. 50. This practice marks a departure from prior cases where I&E relied on a more representative analysis incorporating both Earnings Per Share growth rates and a log linear analysis. *See* City Main Brief, p. 50. The Bureau of Water's recommended growth rate incorporated the Earnings Per Share growth rates for the comparable group, but additionally considered other published projected growth rates and historical growth rates for the comparable group.¹² *See* City Statement No. 1, pp. 42-43. Therefore, I&E's flawed growth rate calculation also invalidates its proposed DCF calculation.

For the reasons set forth above, the Bureau of Water's proposed growth rate provides the most objective estimation of investor expectations of growth and should be approved.

c) Conclusion

As set forth above, both I&E and OCA proposed faulty growth rates, which form the principal component of a DCR analysis; therefore, the Commission should deny the equity cost rate proposals from both parties as reflective of flawed DCF calculations.

¹² While the City based its calculation on published projected growth rates, it considered the 10.9% historical growth rate for the comparable group in arriving at its final recommended 6.7% growth rate for the comparable group.

5. Bureau of Water's Proposed Equity Adjustments are Necessary

The Bureau of Water proposed adjustments to its cost of equity calculations are designed to reflect the important risks specific to its operations. I&E and OCA categorially oppose any equity cost adjustments, which entirely impeaches the credibility of their rate of return recommendations because both entities also oppose use of a market norm capital structure. Although cost of equity adjustments can be adopted for a variety of reasons, they are principally applied as a critical component of a reasonable and fair rate of return, particularly where the adopted capital structure differs from that of the comparable group.

a) *Equity Adjustments are Consistent with Established Ratemaking Principles and Commission Precedent*

Ratemaking principles support application of appropriate adjustments to market DCF results. In *Bluefield*, the Court determined a fair rate of return to be commensurate with "other business undertakings which are attended by corresponding risks and uncertainties." *Bluefield*, at 679. This language forms the basis of the comparable earnings standard necessitating use of comparable groups for each parties' cost of equity analysis. See City Main Brief, p. 33. As discussed by Bureau of Water Witness Mr. Walker, equity adjustments account for differences in risks and uncertainties between the subject utility and the utilities in the comparable group because "the Bureau of Water is exposed to a greater investment risk than the Comparable Group." See City Statement No. 4, p. 59. The Commission has also approved equity adjustments in prior cases, particularly where the adopted capital structure differs from that of the comparable group. See *Lancaster 2010*, p. 73.

I&E and OCA dogmatically oppose any equity adjustments, in plain contravention of precedents and reasonable analysis. I&E's Main Brief egregiously claims that equity adjustments should be categorially denied based on the Commission's decision in *Lancaster 2010*. See I&E

Main Brief, p. 35. I&E ignores the fact that the Commission, in *Lancaster 2010*, did not issue a blanket rule on equity adjustments, but simply determined such adjustments to be unnecessary after granting a 10% market-based cost of common equity. *See id.* OCA also demonstrates a fundamental misunderstanding of equity adjustments, deeming them unnecessary because the DCF itself is a market-based analysis and therefore "reflects the market's assessment and reaction to all risks confronted by the water utility industry." *See* OCA Brief, p. 65.

As addressed above, the purpose of equity adjustments is to ensure the equity return reflects not simply the general industry risks, but the risks attendant to business enterprises similar to the subject utility. *See* City Statement No. 4, p. 59. Accordingly, as the Bureau of Water has demonstrated significant risk differentials distinguishing its operations from those of the comparable group, the proposed leverage and risk adjustments should be approved.

b) The Bureau of Water Leverage Adjustment Should be Approved

I&E and OCA argue the Borough failed to justify its proposed leverage adjustment adjusting its cost of equity results by 70 basis points. *See* OCA Main Brief, p. 64. *See also* I&E Main Brief, p. 38. The arguments offered by both parties misstate the record and must be denied.

OCA argues the adjustment should be rejected because the Bureau of Water already accounted for leverage discrepancies by recommending a 50% debt/50% equity capital structure. OCA presents a clear Catch-22 situation, arguing that the leverage adjustment should be rejected because of the Bureau's 50/50 capital structure, while also arguing for rejection of the 50/50 capital structure. This argument again reflects an unreasonable failure to appropriately balance the interests of the utility and its customers and should be denied.

I&E claims the Bureau of Water failed to provide academic support for the leverage adjustment and further opposed the adjustment on grounds that differences between market and

book value are known to investors, *see* I&E Main Brief, p. 38. I&E's arguments regarding academic support for the Bureau of Water's leverage adjustment grossly misstates the record. As acknowledged by I&E, the Bureau of Water furnished academic support for the premise that market value exists independently of book value, which forms the rationale for the leverage adjustment. *See* I&E Statement No. 1-SR, p. 26.

Second, I&E argues the leverage adjustment must be rejected because any difference between market and book value would be known to investors and therefore factored into the market value DCF calculation. *See* I&E Main Brief, p. 47. This contention misses the point, which is to correct for conditions affecting the accuracy of the DCF analysis amidst market conditions that would otherwise distort its results. *See* Statement No. 1, p. 44 (noting that short-term acquisition frenzy and market sentiments have inflated market-to-book ratios to 266%).

Because the DCF analysis is predicated on the assumption that market value will trend to book value over time, it does not account for economic environments driving investment significantly above book value. *See id.* As all parties concur, the DCF calculation is "based on the assumption that the price of a share of stock is equal to a future stream of cash flows to which the holder is entitled." *See* City Main Brief, p. 45. However, the DCF calculation measures investor expected dividend yields and growth rates, based on book value rate base. *See id.*

Accordingly, where market value significantly exceeds book value rate base, the DCF will understate the cost of common equity. This occurs because the DCF assumes that investment in firms with high market-to-book ratios will migrate to other firms and drive market value down to book value. *See* City Main Brief, p. 46. However, history has shown this proposition to be false, as firms continue to attract investment with high market-to-book ratios. *See id.* Therefore, the DCF's reliance on book value rate base impedes the relevance of its results where market prices

diverge significantly from book prices. With an average market to book ratio of 266% for the comparable group, the DCF analysis must be adjusted to produce results reflecting the Bureau of Water's cost of capital.

As set forth above, I&E and OCA oppose the Company's leverage adjustment as a component of their categorical opposition to equity cost adjustments. A review of the record shows the Bureau of Water has provided ample support for a leverage adjustment in this case. Accordingly, the Bureau of Water's proposed leverage adjustment should be approved.

c) The Bureau of Water's Risk Adjustment Should Be Approved

Consistent with their blanket opposition to any adjustment to the market value DCF, I&E and OCA contest the Bureau of Water's proposed 25 basis point risk adjustment for its cost of common equity. By any measure, the Bureau of Water is a small utility relative to the comparable group. Academic research supports adjustments to account for risks experienced by small utilities in prior Orders. Further, the adjustment is necessary to reflect the Bureau of Water unique risks. Accordingly, the Bureau of Water's proposed risk adjustment should be approved.

I&E unreasonably seizes upon a single metric presented to illustrate the general risk discrepancy between the Bureau of Water and the comparable group in a failed attempt to discredit the risk adjustment. *See* I&E Main Brief, pp. 37-38. I&E criticizes the Bureau of Water's capital intensity analysis, which measures the capital investment required to generate \$1 of revenue. *See id.* While the Bureau of Water addressed its capital intensity, the risk adjustment is not predicated solely on capital intensity. Rather the risk adjustment is based on the basic proposition that the Bureau of Water is a smaller organization than the companies in the comparable group and therefore experiences unique risks that must be accounted for in its cost of equity. *See* Bureau of Water Main Brief, p. 42.

Further, the Bureau of Water's risk adjustment is supported by academic research and Commission precedent. I&E claims the Borough failed to support its adjustment with academic research, noting that a 1993 article questioning the necessity for size adjustments in the utility industry was not rebutted by the Bureau of Water. *See* I&E Main Brief, p. 36. In response, the Bureau of Water provided academic literature supporting size adjustments for utilities, which I&E then criticized as "unrepresentative of the entirety of the market" due to a sample size seemed unacceptable to I&E. *See* I&E Main Brief, p. 37. Whether I&E disagrees or agrees with the findings of the article is irrelevant to the point that I&E cannot credibly claim that the Bureau of Water's size adjustment is not supported by academic literature. Indeed, considering that the financial community overwhelmingly accepts the correlation between risk and size, I&E's reliance on a single 1993 article should not be considered as of limited probative value, particularly as the Bureau of Water has presented academic research contesting the results of that study.

Finally, OCA argues the risk adjust should be denied because the DCF analysis already incorporates all risks confronted by the market industry. *See* OCA Main Brief, p. 65. As outlined in the Bureau of Water's Main Brief, the purpose of the risk adjustment is to account for distinctions between the general market risks observed from the comparable and those unique to the Bureau of Water. *See* City Main Brief, p. 43 (noting "19 of 30 potential risk indicators favor a finding that the Bureau of Water's water system operates at a higher risk than the Water Group companies."). Therefore, the DCF analysis incorporating market risks, must be adjusted for unique risks faced by the Bureau of Water.

While the Bureau of Water understands the intent to reduce cost for customers, these interests must be appropriately balanced against the provision of a reasonable rate of return for the

Bureau of Water's operations. For all the reasons set forth above, equity adjustments are a necessary component of a reasonable rate of return and must be adopted in this case.

6. Any Approved Personal Income Tax Adjustment Must Be Limited to a Maximum Adjustment of 9%

Although the Commission has favored tax adjustments for equity costs in recent municipal rate cases, the inflated proposals from I&E and OCA should be rejected. I&E's proposal runs contrary to the underlying theory of the tax adjustment, while OCA's proposal simply fails to reflect the current economic environment. Although OCA and I&E offer distinct recommendations, they are both rooted in the same fundamentally flawed logic. As a result, both proposals must be rejected in favor of the Bureau of Water's market reflective proposal to adjust the equity cost rate by no more than 9%.

OCA proposes a 20% tax adjustment based solely on the Commission's approval of a 20% tax adjustment in *Lancaster 2010*. In that case, the Commission approved a 20% tax adjustment as reflective of the marginal tax rate for the largest block of municipal investors. *See Lancaster 2010*, p. 80. Regardless of the shortcomings of the underlying methodology (which will be addressed below in the context of I&E's proposal), OCA's recommendation reflects the economic environment from 2010, not the present circumstances. *See City Main Brief*, p. 54. In fact, the Commission in *Lancaster 2010* rejected the municipality's attempt to support a tax adjustment based solely on an adjustment from a prior case. *See Lancaster 2010*, p. 80 (stating "[t]he OTS claimed that the City had failed to provide any support in this case for its recommended 18% tax adjustment, other than the fact that an 18% factor was adopted in *Lancaster Sewer 2005*"). Accordingly, the staleness of OCA's 20% recommendation alone merits rejection.

I&E adopts the same methodology as the Bureau of Water, with a critical and illogical calculation flaw. Despite suggestions to the contrary in I&E's Main Brief, the Bureau of Water

and I&E both recommend a tax adjustment based on the current spread between municipal GO bond yields and public utility bond yields. *See City Main Brief*, p. 52; *see also* I&E Main Brief, p. 41. I&E appears to misunderstand the Bureau of Water's recommendation in alleging that "Mr. Walker does not reference any instances of this methodology being used before." *See* I&E Main Brief, p. 43. As previously noted, I&E and the Bureau of Water both developed tax adjustments based on the spreads between municipal GO bonds and public utility bonds. The Bureau of Water conversely testified as to the limitations of this analysis, noting that revenue bonds should be used in place of GO bonds. *See id.* at 53. However, the Bureau of Water made this point solely to illustrate the limitations of the available data, as revenue bond yields are not published. *See id.* Therefore, the Bureau of Water compared municipal GO bonds to public utility bonds, as done by I&E in this proceeding and supported by Commission precedent. *See Lancaster 2010*, p. 81.

Importantly, while I&E and the Bureau of Water adopt the same basic methodology, only the Bureau of Water's proposal minimizes inherent flaws in the analysis. In approving prior tax adjustments based on spreads between municipal bond yields and public utility bond yields, the Commission previously found such comparisons "should measure spreads between corporate and municipal bonds with similar credit ratings and with matching terms or lives." *See Lancaster Sewer*, p. 104. Accordingly, the Bureau of Water recognized that available data limits the possibility of perfectly matching terms of bonds, but successfully structured its analysis to match the similarly rated municipal GO bonds with similarly rated public utility bonds. *See City Main Brief*, p. 54. Not surprisingly, correcting for this error reduces I&E's proposed 18.22% tax adjustment to 9.06%, approximately the same tax adjustment proposed by the Bureau of Water.

As set forth above, the Bureau of Water's proposed tax adjustment is not unsupported, but conversely represents the only proposed tax adjustment fully consistent with Commission precedents. Therefore, the I&E and OCA tax adjustment should be denied in favor of the maximum 9% tax adjustment developed by the Bureau of Water.

E. Miscellaneous Issues

1. Stipulation with OCA

The City does not dispute OCA's recollection of its stipulation with the City. OCA Main Brief, pp. 66-72.

2. Sales to Shale Gas Companies

The City does not dispute the process of reporting any future sales of water to shale gas companies in its annual reports. OCA Main Brief, pp. 73; Sandy Township Main Brief, p. 11.

3. Sales of Water to Falls Creek

The City addresses OCA's recommendations regarding any sales of water to Falls Creek in Section B.1.b. of this Reply Brief.

4. Answer to I&E's Motion to Strike Portions of Ms. Heppenstall's Testimony

At the November 10, 2016, evidentiary hearing, I&E made two motions to strike evidence from the record. First, I&E objected to the following pieces of testimony from Ms. Heppenstall on grounds that these statements constitute hearsay under Rules 801 and 802 of the Pennsylvania Rules of Evidence: City Statement No. 2, p. 10, lines 15-19; City Statement No. 2-R, p. 16, lines 13-17; and City Statement No. 2-R, p. 17, lines 6-7 and lines 14-15. I&E Main Brief, pp. 3-4. These sections of Ms. Heppenstall's testimony contain her proposed allocations of the City Manager's salary to the Water Fund. In these portions of testimony, Ms. Heppenstall indicates she derived this allocation based upon her discussions with the City Manager, who indicated he spent 60% of his time on Water Fund issues.

Under Rule 801(c) of the Pennsylvania Rules of Evidence, a statement constitutes hearsay if "(1) the declarant does not make [the statement] while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Pa. R.E. 801(c) (emphasis added.). The City Manager's testimony clearly indicates he believes his "duties with respect to the City's water operations easily take up at least 60% of [his] time." City Statement No. 1-R, p. 9, lines 17-18. Accordingly, when Ms. Heppenstall testified as to her recommended salary allocation, she offered her testimony not as proof that the City Manager spent 60% of his non-finance time on Water-related duties, but only that she based her allocation on his representation.

Furthermore, Ms. Heppenstall's statement would alternatively be admissible pursuant to Rule 703 of the Pennsylvania Rules of Evidence, which provides that:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

Pa. R.E. 703.

As noted above, Ms. Heppenstall merely offers the basis for her proposed allocation of the City Manager's salary to the Water Fund. She is not testifying to the fact that the City Manager worked those hours, rather she develops her recommendation based upon what he reports. Ms. Heppenstall simply explains the foundation for her recommendation that the Commission allocate 60% of the City Manager's salary to the Water Fund, without which the recommendation would appear entirely arbitrary. Ms. Heppenstall can and should reasonably rely upon her discussions with the City Manager in providing her recommendation. Accordingly, I&E's motion to strike the above-referenced portions of Ms. Heppenstall's testimony should be denied. This motion is a waste of the parties' and the Commission's resources.

5. Answer to I&E's Motion to Strike Portions of Mr. Walker's Testimony

At the evidentiary hearing, I&E also made a Motion to Strike the following portions of testimony from City Witness Mr. Walker: City Statement No. 4-R, p. 3, lines 8-1; City Statement No. 4-R, p. 4, Footnote; City Statement No. 4-R, p. 12, lines 10-16; and City Statement No. 4-R, p. 18, lines 13-16. In these statements, Mr. Walker testifies that he doubts I&E and OCA would suggest that larger water utilities, such as Aqua Pennsylvania or Pennsylvania American, should receive an unfair rate of return because they are owned by large holding companies or that their rates are subsidized by non-jurisdictional ratepayers. I&E suggests that in "all of these statements,

City Witness Walker speculates as to what I&E and the OCA would suggest for two water companies entirely unrelated to the matter at hand." I&E Main Brief, p. 4. As such, I&E objected on grounds of relevancy and speculation under Pa. R.E. 401 and Pa. R.E. 703, respectively.

Mr. Walker is an expert witness for the City, and testifying that I&E and OCA would not likely offer similar recommendations to reduce the rates of return for Pennsylvania American Water Company or Aqua Pennsylvania, Inc., is fully within his realm of expertise. As an expert witness, Mr. Walker can testify as to his understanding of the regulatory environment in Pennsylvania and hypothetical reactions from regulators, with the Commission reserving discretion to assign whatever weight it deems sufficient in considering that statement.

6. Motion to Strike Portions of OCA Statement No. 2S

On November 10, 2016, the City made a Motion to Strike portions of OCA Statement No. 2S, Tr. at p. 135, beginning on line 6, through p. 137, ending on line 7. The City sought to strike portions of OCA Statement No. 2S on page 3, "beginning on line 19, through page 4, ending on line 17." Tr. at p. 135, lines 6-8. This contested language contains information received by OCA Witness Mr. Fought regarding customer complaints made to OCA. The City's basis for its Motion to Strike is that the information discussed in those sections constitutes inadmissible hearsay.

OCA avers that this statement is not hearsay because it is not being offered into the record as substantive evidence regarding water quality problems. OCA Main Brief, pp. 74-75. As a result, OCA claims these statements fail to constitute hearsay as it is defined under Rule 801(c) of the Pennsylvania Rules of Evidence. OCA Main Brief, p. 74. If this were really the case, then it would have been sufficient for Mr. Fought to state that complaints were received, and not to delve into extreme detail regarding unverified statements from unverified customers. The detail in this testimony treads far beyond the scope of simply noting that complaints had been filed.

OCA confusingly attempts to claim these statements are admissible under Rule 703 of the Pennsylvania Rules of Evidence because they are the basis for Mr. Fought's opinion on the facts or data the expert has been made aware of or personally observed. OCA Main Brief, pp. 74-75. As demonstrated during cross-examination, Mr. Fought never actually observed these issues:

Q. Can you describe exactly how these customers contacted the OCA?

A. If I can. Customer number 1 contacted the OCA by e-mail. I don't know if it was their first contact with the OCA, but it was the information that was passed on to me first. Customer number 2, I believe, was a telephone conversation with an OCA attorney.

Tr. at p. 140, lines 21-25.

Q. Did these customers provide addresses for their service locations?

A. Yes.

Q. Did you verify whether these customers are customers served directly by the City of DuBois on their distribution system or customers that take wholesale service from the City of DuBois as Sandy Township distribution customers?

A. I believe that these customers are served as jurisdictional customers.

Q. But you have not independently verified that assessment?

A. I plotted their addresses on a map and came to the conclusion that they were jurisdictional customers.

Q. Following the communication between the OCA and these customers, did you conduct a personal investigation to verify the veracity of the service claims set forth by the customers?

A. No.

Q. So you have not - - referencing page 3 of your testimony, lines 30 and 31, you have not actually observed grayish water in the City of DuBois system?

A. No.

Tr. at p. 141, lines 3-25.

While OCA states that expert witnesses "can reasonably rely on reports of consumer complaints regarding water quality in forming their expert opinions," in this case, Mr. Fought has done little more than relay, word-for-word, the discussions between counsel for OCA and individuals alleged to customers of the City of DuBois. OCA Main Brief, p. 76. Mr. Fought could have simply explained that one of the bases for his opinion were alleged reports of customer complaints, but Mr. Fought cannot and should not be permitted to testify extensively as to the form and substance of these purported complaints when the reported allegations were made to another party and he has no personal knowledge of the matter.

For the reasons set forth above, the City's Motion to Strike should be granted.¹³

7. Extra-record Attachment to Sandy Township's Main Brief

As set forth below, Sandy Township's decision to include information outside of the evidentiary record in its Main Brief shows flagrant disregard to the Commission's procedural rules and cannot be considered in deciding the City's rate request.

Sandy Township's Main Brief includes an Attachment 1 consisting of a newspaper article, dated November 21, 2016, which was not admitted to the record in this proceeding. Section 5.431(a) of the Pennsylvania Public Utility Code, 52 Pa. P.U.C. § 5.431(b), states that the record closes "at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." Accordingly, the record closed on November 10, 2016, because neither the ALJ nor the Commission indicated it remain open to accept additional evidence. *See* 52 Pa. P.U.C. §

¹³ OCA alternatively proposes that, at minimum, lines 19-26 of Mr. Fought's testimony be admitted. *See* OCA Main Brief, p. 76. However, with regards to the testimony at lines 24-26, OCA offers no credible basis for admission of such testimony as these statements were made for the truth of the matter asserted and constitute inadmissible hearsay.

5.431(b). Section 5.431(b) of the Pennsylvania Public Utility Code indicates that after the record closes, "additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. P.U.C. § 5.431(b).

While Sandy Township filed a Motion to Accept Newspaper Article into the Record ("Sandy Motion") on November 28, 2016, the Sandy Motion has not been addressed and, therefore, the referenced article constitutes extra-record material improperly attached to Sandy Township's Main Brief. Therefore, the City respectfully requests the Commission strike Sandy Township's Attachment 1, including the reference to such Attachment at pages 5 and 6 of Sandy Township's Main Brief.¹⁴ *See* Sandy Township Main Brief, pp. 5-6.

To the extent the Commission considers the referenced newspaper article, the City submits the article presents no information relevant to the rate case. Consistent with the City's prior testimony, the article states the City and Falls Creek have not yet reached an agreement on an interconnection between the two systems. *See* Sandy Township Main Brief, Attachment 1. Even accepting the claims represented in the article to be true and accurate, the article consists solely of reports from Falls Creek officials as to: (1) their subjective impressions of discussions with City staff; and (2) a timetable developed by the Department of Environmental Protection projecting construction of interconnection facilities to commence by May 2017 and to conclude by December 31, 2017. *See id.* Accordingly, even if accepted as true, which the City does not concede, the averions in the referenced newspaper article do not support consideration of the potential service extension, as it remains unknown and unmeasurable.

¹⁴ The City will additionally file a separate Answer and Motion to Strike addressing Sandy's extra-record submission.

Sandy Township's inexplicable references to the conclusion of the suspension period in this proceeding must also be dismissed as irrelevant. The possibility that the City and Falls Creek could reach some kind of agreement and commence construction at some point following expiration of the suspension period on March 29, 2017, has no bearing on the dispositive question of whether the facilities will be in service prior to December 31, 2016. Even in rare cases where the Commission looks beyond the FTY in rate cases, the Commission has limited such exceptions to projects reasonably certain to be completed within 6-7.5 months of the test year, not projects that could potentially commence construction within such periods. *Pa. Pub. Util. Comm'n. v. The Bell Telephone Co. of Pa.*, 51 Pa. P.U.C. 570, **576; *see also Pa. Pub. Util. Comm'n. v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 407, **420-421 (indicating that the Commission may include projects in the rate base if they are completed approximately 6-7.5 months after the end of the test year). Therefore, Sandy Township's claims as to potential for commencement of construction following expiration of the suspension period are irrelevant.

For the reasons stated above, the referenced newspaper article has no bearing on the City's rate case and should be stricken or otherwise disregarded.

8. Sandy Township's Request for a Wastewater Cost of Service Study Must be Denied

Sandy Township alleges the City has not provided assurances of double recovery of costs between its water and wastewater operations and requests the Commission direct the City to submit a Cost of Service Study for its wastewater operations. This disingenuous attempt to interfere with the City's wastewater operations must be categorically rejected. The City has explained its methodologies for allocating water and wastewater costs. *See* Attachment 3 to Sandy Township Statement No. 1; *see also* City Statement No. 2, pp. 10-12. Sandy Township makes an empty and perfunctory claim that it "does not ask the Commission to engage in regulation of the City's

unregulated wastewater charges," before paradoxically asking the Commission to compel the City to perform and submit a Cost of Service Study for its wastewater operations.¹⁵ Moreover, the only reason offered for such request is an increase in Sandy Township's wastewater costs, not any specific allegation of water-related costs that are being double recovered. *See* Sandy Township Main Brief, p. 11. For these reasons, Sandy Township errant request for Cost of Service Study related to non-jurisdictional wastewater facilities must be rejected.

F. Rate Structure

1. Cost of Service

OSBA, I&E, and OCA all supported the City's proposed Cost of Service. I&E Main Brief, p. 45; OSBA Main Brief, p. 6, and OCA Main Brief, p. 77. Sandy Township is the only party that opposes the City's Cost of Service study. The City opposes Sandy Township's recommendation to "look carefully at the costs claimed and allocated by the City for its water service to make sure that the City is not double recovering costs in the first instance through its water charges and, in the second instance, through its wastewater charges." Sandy Township Main Brief, pp. 11-12, 15. Wastewater charges are not within the purview of this proceeding nor are they subject to the Commission's jurisdiction. Under Section 1102(a)(5) of the Pennsylvania Consolidated Statutes, the Commission may only regulate municipal corporations that provide public utility services beyond their corporate boundaries. 66 Pa. C.S. § 1102(a)(5). The City does not provide wastewater service outside of its corporate boundaries, which therefore limits this rate investigation solely to the City's water service. Moreover, Sandy Township's attempts to bring the City's wastewater service into this proceeding violates Section 5.401 of the Commission's

¹⁵ To the extent Sandy Township attempts to distinguish between the City's wastewater charges and wastewater facilities, the City submits the Commission lacks jurisdiction over both components of its wastewater operations pursuant to Sections 1301 and 1102(a)(5) of the Public Utility Code. *See* 66 Pa. C.S. §§ 1301 and 1102(a)(5).

Regulations, 52 Pa. Code § 5.401, by raising, among other things, irrelevant information that is likely to confuse the issues and waste the Commission and the parties' resources. Accordingly, the Commission should disregard Sandy Township's claims on this issue.

2. Revenue Allocation

The OSBA supports the City's proposed revenue allocation. OSBA Main Brief, p. 7. Likewise, I&E does not raise any concerns with the City's proposed revenue allocation. I&E Main Brief, p. 45. OCA did not take a position on the City's proposed revenue allocation or other rate structure issues. OCA Main Brief, p. 77. Accordingly, Sandy Township is the only party to respond to the City's proposed revenue allocation, but avers only that the City "failed to support an increase in rates that would require allocation." Sandy Township Main Brief, p. 15. As Sandy Township proposed no alternative revenue allocation or credible position on the City's proposed revenue allocation independent of the revenue requirement issues, the statement amounts to a meaningless aversion requiring no response from the City. Therefore, the City's proposed revenue allocation, including the proportional scaleback of usage-based charges in the event of an increase lower than the as-filed proposal, should be approved.

3. Tariff Structure

Sandy Township submits the City did not provide enough support to justify a change in rates or a change to its tariff structure. Sandy Township Main Brief, p. 15. Meanwhile, I&E endorses the City's proposal to withdraw Rule 36, OCA does not take any position on the City's tariff structure, and OSBA does not evidence any opposition or concern with the City's tariff structure beyond a recommendation that the City pursue certain tariff issues in its next base rate filing. I&E Main Brief, p. 45; OCA Main Brief, p. 77; and OSBA Main Brief, p. 10.

Similar to its position on the City's proposed revenue allocation, Sandy Township offered no specific or credible positions on the City's proposed tariff structure independent of the revenue

requirement issues. Therefore, Sandy Township's statement on tariff structure amounts to a meaningless aversion requiring no response from the City.

Regarding OSBA, the tariff structure concerns raised by OSBA pertain to future rate cases and should not be addressed at this time. OSBA requests that the Commission order the City to revise its tariff rate structure if the City finds it is unable to implement a cost-based class revenue allocation in its next base rate case. OSBA Main Brief, pp. 8-10. These concerns are premature and speculative. Upon receipt of the City's next base rate filing, OSBA will have the right to review the filing and, if deemed necessary, propose its preferred revenue allocation. Accordingly, the Commission should disregard OSBA's recommendations as unnecessary and speculative.

V. CONCLUSION

WHEREFORE, for all of the foregoing reasons, the City of DuBois – Bureau of Water respectfully requests that the Pennsylvania Public Utility Commission approve its proposed rate increase, as adjusted via its rebuttal and oral rejoinder testimony, in the amount of \$229,551, and declare the Commission's investigation be marked closed.

Respectfully submitted,

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Dated: December 12, 2016

Appendix A

DISPUTED FINDINGS OF FACT

RATE BASE

3. In rejoinder, City witness Heppenstall made a total adjustment to rate base of \$642,060. CEH-3RJ.

City's Response: DISPUTED. The City can accept this response with the clarification that this adjustment was made by Ms. Heppenstall in response to Mr. Spanos's rebuttal testimony. This change was not made during oral rejoinder.

4. This results in a revised rate base claim of \$14,980,254. City Exh. CEH-1 at 10; CEH-3RJ.

City's Response: DISPUTED. See pages 3 of City's Reply Brief.

ADDITIONS TO RATE BASE

7. Ms. Everette found that the City has neither started the project, nor spent any money on the project. OCA St. 1 at 4; I&E-RB-7 (attached to OCA St. 1); OCA-V-3 (attached to OCA St. 1).

DISPUTED. See pages 2-3 of the City Statement No. 3-R, providing justification for inclusion for the City's additions to rate base.

9. While the City was asked to provide all of the information concerning this project, City witness Spanos stated that requiring information which would establish that the plant additions would be in service by the end of the future test year is "an unreasonable expectation." City St. 3R at 3.

City's Response: DISPUTED. See page 4 of the City's Reply Brief.

10. The end of the Future Test Year is less than two months away and the City has not provided a start date and an estimated time-frame for the project's completion. OCA OCA St. 1S at 4.

City's Response: DISPUTED. See page 4 of the City's Reply Brief.

MAINS ADDITIONS

22. While testifying that the project would be completed in November, the City has not provided a start date for the project, an answer as to the amount of time the project will take before it is placed into service, the percentage of the project that has been completed, or that any amount for the project has been expended to date. OCA St. 1S at 2-3. No support

for this November completion month was provided and there have been no further updates to interrogatories or data requests that address the High Street project and its anticipated completion. OCA St. 1S at 2.

City's Response: DISPUTED. See page 3 of the City Statement No. 3-R, affirming the High Street project will be placed into service before the end of November.

23. As the City has not supported these proposed rate base additions, OCA witness Everette recommended that an adjustment be made to remove the \$55,911 of Mains and Accessories for this project, with a jurisdictional component of \$14,531. Table II; OCA St. 1S at 3; OCA Exh. AEE-1S at line 4. The associated depreciation expense of \$475, with a jurisdictional component of \$124, has also been removed by Ms. Everette. Table II; OCA St. 1S at 3; OCA Exh. AEE-1S at line 19.

City's Response: DISPUTED. See pages 2-3 of the City Statement No. 3-R, providing supporting justification for inclusion of the Mains and Accessories project.

FIRE HYDRANTS

30. As discussed above, work on the High Street mains project has not begun and costs for the project were removed.

City's Response: DISPUTED. See page 3 of City Statement No. 3-R. The record indicates that work on the High Street main project had not yet begun as of October 20, 2016. Further, only OCA removed costs of this project from rate base, no other party adjusted the City's claim.

30. In rebuttal, the City witness Spanos stated the High Street mains project will be completed in November. City St. 2R at 3-4.

City's Response: DISPUTED. The can accept the above Finding of Fact with clarification that Mr. Spanos made this statement in City Statement No. 3-R at pages 3-4.

31. City witness Spanos did not provide any support that the project will be completed in November. OCA St. 1S at 2.

City's Response: DISPUTED. See page 3 of the City Statement No. 3-R, affirming the High Street project will be placed into service before the end of November.

32. While the City updated its claims to reflect \$56,421 of fire hydrant additions, this updated amount is not supported for ratemaking purposes because it includes projects at various stages, including some projects that have not even been started. OCA St. 1 at 8.

City's Response: DISPUTED. See pages 2-3 of the City Statement No. 3-R. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See *Pennsylvania Public Utility Commission, et al. v. Pennsylvania American Water Company*, 2011 Pa. PUC LEXIS 264, *53 (Oct. 27, 2011); see also *Application of CheckerX of Delaware Valley Inc.*, Initial Decision, 2016 Pa. PUC LEXIS 126, *18 (Mar. 10, 2016).

33. Specifically, an adjustment should be made to remove the \$5,769 of fire hydrants additions for the High Street mains project, with a jurisdictional component of \$1,071. Table II; OCA St. 1S at 3; OCA Exh. AEE-1S at line 6. The associated \$82 adjustment to depreciation expense with a jurisdictional portion of \$15 has also been removed by Ms. Everette. Table II; OCA St. 1 at 8; OCA Exh. AEE-1S at line 21.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

BILLING, PAYROLL, AND ACCOUNTING SOFTWARE

35. The City has not yet confirmed a provider for this purchase. OCA St. 1 at 9.

City's Response: DISPUTED. See page 3 of City Statement No. 3-R. The record indicates that the City had not yet confirmed a provider for this purchase as of October 20, 2016.

36. Moreover, the City has spent nothing on the project and the project has not been started. OCA St. 1 at 9.

City's Response: DISPUTED. See page 3 of City Statement No. 3-R. The record indicates that the City had not spent money or started the project as of October 20, 2016.

37. The City provided no evidence that the project would be started by the end of the FTY. Instead, City witness Spanos merely claimed that requiring information that would establish that the plant addition will be in service by the end of FTY is "an unreasonable expectation." City St. 2R at 3.

City's Response: DISPUTED. Please see page 4 of the City's Reply Brief.

38. A rate base adjustment of \$13,341, with a jurisdictional component of \$1,426, has been recommended by Ms. Everette since the City has not demonstrated that this software will be installed prior to the end of the future test year. Table II; OCA St. 1S at 4; OCA Exh. AEE-1S at line 7. The associated depreciation expense adjustment of \$890, with a jurisdictional component of \$254, has also been removed by Ms. Everette. Table II; OCA St. 1S at 4; OCA Exh. AEE-1S at line 22.

City's Response: DISPUTED. The above statement, with regard whether the City demonstrated that the software will be installed prior to the end of the future test year, is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

PHONE SYSTEM

40. The City has spent nothing on the project, and the project has not been started. OCA St. 1S at 3.

City's Response: DISPUTED. See page 3 of City Statement No. 3-R. The record indicates that the City had not spent money or started the project as of October 20, 2016.

41. The City has not confirmed a provider for this project. OCA St. 1S at 3.

City's Response: DISPUTED. See page 3 of City Statement No. 3-R. The record indicates that the City had not yet confirmed a provider for this purchase as of October 20, 2016.

42. The \$5,833 claim should be excluded from rate base since costs have not yet been incurred and the future test year ends in less than 2 months. OCA St. 1S at 3-4.

City's Response: DISPUTED. See page 3 of City Statement No. 3-R. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

43. An adjustment in the amount of \$5,833, with a \$1,663 jurisdictional component, should be made to reflect that fact that no costs have been incurred for a phone system. Table II; OCA St. 1S at 4; OCA Exh. AEE-1S at line 8. The associated depreciation expense adjustment of \$389, with a jurisdictional component of \$111, should also be adopted. Table II; OCA St. 1S at 4; OCA Exh. AEE-1S at line 23.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

DEDUCTIONS FROM RATE BASE – VACANT HOME

50. The home is vacant and is not used or useful for the provision of water service. OCA St. 1S at 29.

City's Response: DISPUTED. See page 7 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

52. The vacant home fails to meet the requirement that plant held for future use must have a definite plan of use within a specific time frame because there are no current plans regarding the vacant home and no specific time-frame has been offered by the City for the vacant home being put into use to serve ratepayers. OCA St. 1S at 13.

City's Response: DISPUTED. See page 7 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

53. Since this home is vacant, has no specific time-frame in which it will be put into use, and is not currently used or useful for the provision of water service, the vacant home should be removed from the City's rate base. OCA St. 1 at 29; OCA St. 1S at 13.

City's Response: DISPUTED. See page 7 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

54. The OCA submits that the \$11,116 net book value of the home should be removed from rate base. Table II; OCA Exh. AEE-1S at line 9.

City's Response: DISPUTED: The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

EXPENSES

VACANT HOME EXPENSES

62. A \$3,592 reduction for the vacant home's expense and a \$572 adjustment to depreciation expense should be made, which include jurisdictional components of \$1,077 and \$172 respectively. See, Table II; OCA Exh. AEE-1 at lines 24-25; OCA St. 1 at 29.

City's Response: DISPUTED. See pages 24-25 of City's Reply Brief for additional detail. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

TRANSMISSION AND DISTRIBUTION CONTRACTING SERVICES

66. An adjustment of \$40,623 with a jurisdictional portion of \$11,216 should be made. Table II; OCA St. 1S at 15; OCA St. 1 at 30; OCA Exh. AEE-1S at line 26.

City's Response: DISPUTED. See page 21 of City's Reply Brief for more detail. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

WATER TREATMENT PLANT CONTRACTUAL SERVICES

75. The two prior years of expenses indicate that the 2015 level of expense was not normal and for this reason OCA witness Everette recommended that a three year normalization period be used for ratemaking purposes. OCA St. 1 at 31-32.

City's Response: DISPUTED. See page 21 of City's Reply Brief for more detail. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

77. There are some circumstances in which annualization can appropriately reflect a whole year of expense, such as when an expense does not vary significantly on a monthly basis.

City's Response: DISPUTED. OCA offers no record citation for this proposed Finding of Fact.

78. The Water Treatment Contractual Services expense is not one that is incurred on a level basis throughout the year.

City's Response: DISPUTED. OCA offers no record citation for this proposed Finding of Fact.

82. Using a normalized level based on the actual expenses over three years is a reasonable approach given the expenditures. OCA St. 1S at 18.

City's Response: DISPUTED. See page 21 of City's Reply Brief for more information. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

CITY MANAGER'S SALARY

88. Given that allocation issues were an issue of significant contention in the last case, the City had notice that support would be needed for allocated expenses in this case. OCA St. 1S at 20.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

89. The City Manager could have kept timesheets but did not. OCA St. 1S at 20.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

90. Since the City Manager oversees financial matters, in addition to numerous other responsibilities, a 24% allocation of the City Manager's salary, which reflects the verified allocation for treasury and finance employees to the Water Fund, is a reasonable allocation based on the limited information provided by the City. OCA St. 1 at 35.

City's Response: DISPUTED. See City's response on page 29 of the City's Reply Brief. Additionally, and particularly with regard to the reasonableness of the OCA's proposed 24% allocation, the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

93. The City states that the allocation of the City Manager's salary is based on the City Manager's projections of how his time is spent. OCA St. 1 at 34.

City's Response: DISPUTED. The City Manager's salary is based on his experience in the role and actual prior work. See page 29 of the City's Reply Brief for more information.

95. Mr. Suplizio contradicted these percentages at the evidentiary hearing when he stated that "I think 60 percent is probably on the low end." Tr. at 26:18-19.

City's Response: DISPUTED. See page 30 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

97. Neither of Mr. Suplizio's estimates are based on verifiable information.

City's Response: DISPUTED. See page 30 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

104. The sewer department has more employees than the water department. Tr. 76:18-20.

City's Response: DISPUTED. The phrase "more employees" is misleading. With a total of 10 employees, the sewer department has one more employee than the water department's 9 employees. Tr. at 76: 18-20.

108. While Mr. Suplizio says that he looks over the reports, he was unable to identify what was contained in the Chapter 110 reports. Tr. 39:25-40:22.

City's Response: DISPUTED. The transcript indicates only that the City, on the stand and without documentary references, indicated confusion as whether the Chapter 110 report is required by the Department of Environmental Protection or the Susquehanna River Basin Commission. See Tr. 40: 12-22.

109. The City Manager, according to his job description, does not strictly work in tandem with the Public Works Director, as argued by the City. The Public Works Director does not have any of the above-listed responsibilities, but is instead responsible for the distribution and collection lines. Tr. 41:21-42:3.

City's Response: DISPUTED. See page 27 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

110. The allocation of the City Manager's salary to the Water Fund should not be allocated on the basis of the Public Work Director's salary since the two jobs are not the same and as there is no verifiable basis to support the City's assertion that this allocation would be reasonable.

City's Response: DISPUTED. See page 27 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

111. City witness Heppenstall's determination of the percentage of time that City Manager Suplizio spends on water further illustrates the speculative nature of the City Manager's salary calculations given that the basis of her testimony regarding the City Manager's salary is interviews with the City Manager. In her direct testimony, City witness Heppenstall states that "[t]he allocation percentage of 60% of the City Manager's salary (\$109,208) is based on an interview with the City Manager in which he estimates that 60% of his time is spent on matters related to the water system." City St. 2 at 10 (emphasis added).

City's Response: DISPUTED. See pages 26 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

113. City witness Heppenstall "does not provide the rationale for the two-part allocation or any documentation demonstrating the accuracy of the allocation." OCA St. 1S at 21.

City's Response: DISPUTED. See pages 30 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

115. The City Manager's annual salary is \$124,076 and City witness Heppenstall allocates 60% of the portion of the City Manager's salary which is not related to finance issues to the water fund. However, the actual total percentage of time the City Manager spends on water according to City witness Heppenstall is 55.7%, which is less than the amount of time the City Manager testified to and contradicts City witness Heppenstall's initial contention in her direct testimony.

City's Response: DISPUTED. See page 30 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

120. In the next case, the City should be required to provide documentation, including timesheets, demonstrating the appropriate allocation of the City Manager's time. OCA St. 1 at 34-35.

City's Response: DISPUTED. See pages 25-30 of the City's Reply Brief. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

121. Given that the City Manager oversees financial matters, in addition to numerous other responsibilities, a 24% allocation which reflects the verified allocation for treasury and finance employees to the Water Fund is a reasonable allocation based on the limited information provided by the City. OCA St. 1 at 35.

City's Response: DISPUTED. See pages 25-30 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

ADMINISTRATIVE EXPENSE

123. The City has claimed \$58,712 for Administrative Expense and has allocated 60.3%, or \$35,403 to the Water Fund. OCA St. 1 at 35.

City's Response: DISPUTED. See page 19 of the City Statement No. 2-R.

125. The City determined this allocation by taking the allocation of the City Manager's and the Public Work Director's salaries, averaging these allocations together, and thereby reaching a conclusion that it would be logical to allocate expenses related to their work in the same manner as their salaries are allocated. OCA St. 1 at 36.

City's Response: DISPUTED. The referenced allocations were weighted, not averaged. OCA St. 1 at 36.

126. Charging 60.3% of administrative expenses to the Water Fund would be inappropriate. As discussed above, 60% is not an appropriate allocation for the City Manager's salary.

City's Response: DISPUTED. See page 30 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

129. \$32,467 (55.3%) of this expense account is identifiable as specifically related to non-Water-related functions of the City. These City-level functions such as blighted property removal are completely unrelated to the provision of water service, such that no portion of these expenses should be charged to the Water Fund.

City's Response: DISPUTED. See page 19 of the City Statement No. 2-R. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

130. Given that 55.3% of this account should not be charged to the Water Fund even as an allocated expense, it would not be appropriate to charge 60.3% of the total expense to the Water Fund.

DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

CITY BUILDINGS: COMPUTER PARTS/SUPPLIES/SOFTWARE

160. In rebuttal, City witness Heppenstall provided a list of expenses from 2015 which she testified "clearly show that the expense items in this account related to ongoing computer needs of the City." City St. 2R at 22. However, City witness Heppenstall does not provide any explanation as to why the expense more than doubled in one year. OCA St. 1S at 24.

City's Response: DISPUTED. See pages 31-32 of the City's Reply Brief.

161. There is no support to indicate that the increased expense in 2015 is an ongoing expense. OCA St. 1S at 24. As such, it is appropriate to normalize the expense as it is significantly higher than a normal year of expense. OCA St. 1 at 41; OCA St. 1S at 24.

City's Response: DISPUTED. See page 31-32 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

RATE CASE EXPENSE

177. The OCA submits that a 5 year normalization period is appropriate based on the City's historical filing frequency.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

180. These cases were filed 3, 9, and 7 years apart respectively, which is not indicative of a 2.5 year normalization period. OCA St. 1 at 45.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

181. Even the most recent case does not support a 2.5 year normalization period as the most recent case and the present filing are separated by 3.25 years. OCA St. 1 at 45.

City's Response: DISPUTED. See pages 22-23 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

191. There are many reasons that the City may alter the timing of its filing of rate cases. Although Ms. Heppenstall's testimony focused on what percentage of rate case expense the City would recover if it chose to file earlier than the rate case normalization period, it is important to understand that the reverse is also true. If the City waits longer than the normalization period before filing its next rate case, it will continue to collect the annual rate case expense as part of annual revenues."

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

192. The City's rate case expense must accurately reflect the City's filing history.

City's Response: DISPUTED. See page 22-24 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

193. Since the average historical period of time between the City's last three rate cases is more than five years, it is reasonable and appropriate to use a five year normalization period to ensure consistency with past Commission precedent.

City's Response: DISPUTED. See page 22-40 of the City's Reply Brief. Additionally the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

194. Each of the capital structure components is identifiable and directly relates to the Company's facilities which are included in the rate base upon which the City seeks to earn a return. OCA St. 1 at 13-16; OCA St. 1S at 5-8.

City's Response: DISPUTED. See page 37 of the City's Main Brief.

196. The 8.25% cost of equity recommended by Ms. Everette is the result of the DCF analysis.

City's Response: DISPUTED. The City can accept the above Finding of Fact only with the clarification that the 8.25% cost of equity recommended by Ms. Everette is the result of her DCF analysis.

197. The midpoint of the DCF range of 7.5% to 9.0% is 8.25%. OCA St. 1 at 12-13, 16-23; OCA St. 1S at 9-11.

City's Response: DISPUTED. The City can accept the above Finding of Fact only with the clarification that the midpoint of Ms. Everette's DCF range of 7.5% to 9.0%, is 8.25%

198. The OCA recommends a capital structure of 70% debt/30% equity which reflects the financing used by the City for its future test year level of rate base. OCA St. 1 at 15.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

207. This is the best information that the City made available. OCA St. 1S at 5.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

214. A capital structure of 70% debt/30% equity is appropriate for ratemaking purposes. OCA St. 1 at 14-15.

City's Response: DISPUTED. See pages 34-36 of the City's Reply Brief. Additionally, the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

218. It is not appropriate to treat debt as if it were equity as this would force ratepayers to pay a higher cost than the Bureau of Water is actually incurring for its financing needs because the cost of equity claimed is approximately three times the cost of debt. OCA St. 1 at 14.

City's Response: DISPUTED. See pages 35 of the City's Main Brief. Additionally, the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

219. Using the overall rate of return of 6.76% claimed by the City and applied to its pro forma capital structure, with its cost rates, would result in an excessive 14.98% return on equity (ROE). OCA St. 1 at 15-16.

City's Response: DISPUTED. See Appendix A to the City's Main Brief. Additionally, the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

223. OCA's recommended 8.25% return on equity is in line with results of the DCF analysis and with current economic conditions.

City's Response: DISPUTED. See pages 34-36 of the City's Reply Brief. Additionally, the above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

226. The income from municipal bonds is not taxable which affects the return that an investor requires, compared to the return required on an investor-owned utility's financing. OCA St. 1 at 17.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

238. Analyst projections of growth may be overstated, while historical growth may not equal future rates. OCA St. 1 at 19.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

242. The five year average projected retention growth rate is 4.8% and the average projected growth rate for the period 2013-2015 to 2019-2021 is 5.5%. OCA St. 1 at 20.

City's Response: DISPUTED. The City can accept the proposed finding of fact with the clarification that Ms. Everette's calculation of the five year average projected retention growth rate is 4.8% and Ms. Everette's calculation of the average projected growth rate for the period 2013-2015 to 2019-2021 is 5.5. These calculations are based on the Ms. Everette's workpapers set forth in her Exhibit AEE-2, which show Ms. Everette's unique inputs.

246. Ms. Everette determined an appropriate growth rate range of 5.2% to 6.7%. OCA St. 1 at 20.

City's Response: DISPUTED. The above statement, as related to the appropriateness of Ms. Everette's growth rate range, is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

247. Ms. Everette determined that a proper DCF cost of equity is in the range of 7.5% to 9.0%. OCA St. 1 at 20; Exh. AEE-2, Sch. 4, p. 4.

City's Response: DISPUTED. The above statement, as related to the appropriateness of Ms. Everette's DCF cost of equity, is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

248. Investors in investor-owned utilities have income taxes associated with dividends and capital gains, and thus require a higher equity return than if the dividends and capital gains were tax exempt. OCA St. 1 at 21.

City's Response: DISPUTED. The City submits that the above statement forms the basis for income tax adjustments to cost of equity calculations, but remains in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

249. The equity returns required by investors in investor-owned utilities implicitly reflect a provision for the income taxes that the investor pays. OCA St. 1 at 21.

City's Response: DISPUTED. The City submits that the above statement forms the basis for income tax adjustments to cost of equity calculations, but remains in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

251. The 9% tax factor recommended by City witness Walker does not consider that there are multiple other reasons for differences in yields between general obligation bonds and similarly rated investor-owned public utility bonds.

City's Response: DISPUTED. See page 46 of the City's Reply Brief.

252. It is not reasonable to calculate the income tax effect by comparing the yields of the two types of bonds. OCA St. 1 at 22.

City's Response: DISPUTED. See page 46 of the City's Reply Brief. Additionally, this statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, *supra*.

254. The 20% tax factor adjust is still appropriate because income tax rates have not changed materially since the Commission's Order in Lancaster 2011. OCA St. 1 at 23.

City's Response: DISPUTED. See page 46 of the City's Reply Brief.

286. At the time of Mr. Fought's direct testimony, the City did not keep a record of complaints from jurisdictional customers. OCA St. 2 at 8.

City's Response: DISPUTED. The City has always preserved a record of written complaints, but has not historically preserved records of complaints made by telephone. See City Statement No. 1-R, p. 11.

288. Ongoing records are important information since they show whether customers have quality of service issues and because they would show what steps the City took to remedy customer complaints and whether the City responded in a timely manner. OCA St. 2 at 8.

City's Response: DISPUTED. The above statement is in the nature of opinion and/or argument and therefore cannot constitute a Finding of Fact. See Response to OCA Finding of Fact No. 32, supra.

290. Subsequent to the filing of OCA witness Fought's direct testimony, Mr. Fought was made aware of complaints made to OCA by jurisdictional customers via telephone. OCA St. 2S at 3-4.

City's Response: DISPUTED. See pages 55-56 of the City's Main Brief. To the extent the Commission grants the City's Motion to Strike, the above Finding of Fact must be denied.

291. The reported existence of complaints being made to the City was in contradiction to what OCA witness Fought was told by City witness Suplizio during OCA witness Fought's site visit. OCA St. 2 at 3-4.

City's Response: DISPUTED. See pages 55-56 of the City's Reply Brief. To the extent the Commission grants the City's Motion to Strike, the above Finding of Fact must be denied.

316. In the disputed testimony, OCA expert Fought is asked "[c]an you provide an example of why it is important to have the information you described above [referencing a complete log of complaint which includes telephone complaints]?" OCA St. 2S at 3: 19-21. In response, Mr. Fought states that he was made aware of complaints regarding water quality.

City's Response: DISPUTED. See pages 55-56 of the City's Main Brief. To the extent the Commission grants the City's Motion to Strike, the above Finding of Fact must be denied.

317. Mr. Fought includes the disputed answer in his testimony as a part of his basis as to why a complaint log which accounts for telephonic complaints to the City is necessary for the City to maintain high water quality standards.

City's Response: DISPUTED. See pages 55-56 of the City's Main Brief. To the extent the Commission grants the City's Motion to Strike, the above Finding of Fact must be denied.

318. All of Mr. Fought's statements in this section of his surrebuttal testimony regarding customer contact specifically state that he received reports or was informed by customers of water quality issues.

City's Response: DISPUTED. See pages 55-56 of the City's Main Brief. To the extent the Commission grants the City's Motion to Strike, the above Finding of Fact must be denied.

320. However, Mr. Fought was made aware of jurisdictional customers who claim that they have contacted the City with water quality issues. OCA St. 2S at 3-4.

City's Response: DISPUTED. See pages 55-56 of the City's Main Brief. To the extent the Commission grants the City's Motion to Strike, the above Finding of Fact must be denied.