**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2019-3010955

Office of Consumer Advocate : C-2019-3011834

Office of Small Business Advocate : C-2019-3012096

:

v. :

:

City of Lancaster – Wastewater :

**SCHEDULING ORDER**

On July 19, 2019, City of Lancaster – Wastewater (Lancaster) filed Supplement No. 39 Sewer – PA P.U.C. No. 7 to become effective September 17, 2019 seeking an increase in total annual operating revenues for wastewater service by approximately $646,727, or 46.7%, for wastewater customers who reside outside of the City. If the company’s entire request is approved, the proposed metered usage rates would increase from $52.25 to $75.66 per quarter, or by 44.8% for the average residential customer using 12,000 gallons of wastewater per quarter.

On July 29, 2019, the Office of Consumer Advocate (OCA) filed a formal complaint and public statement against the tariff filing, docket number C-2019-3011834, averring, among other things, that a preliminary examination of Lancaster’s rate increase request indicates that the present rates and proposed charges, increases and changes in rates, rules and regulations contained within the request are or maybe unjust, unreasonable and in violation of law or will or may allow Lancaster an opportunity to recover an excessive rate of return on its utility property investment, in violation of the Public Utility Code. The OCA asked that the Commission suspend and investigate the operation of the proposed tariff supplement pursuant to Section 1308(d) of the Public Utility Code and hold full evidentiary hearings to examine the reasonableness of Lancaster’s current rates and its proposed increases in rates. The OCA also asked that public input hearings be held in the affected service territory.

On August 5, 2019, the Commission’s Bureau of Investigation and Enforcement (I&E) intervened into this case.

On August 8, 2019, the Office of Small Business Advocate (OSBA) filed a formal complaint against the tariff filing, docket number C-2019-3012096, averring, among other things, that upon review of the materials filed by Lancaster, those materials maybe insufficient to justify the rate increase requested and that Lancaster’s present and proposed rates, rules and conditions of service may be unjust, unreasonable, unduly discriminatory and otherwise contrary to law, particularly as they pertain to small business customers. The OSBA further averred that the present and proposed rates, rate design and cost and revenue allocation are or maybe unjust, unreasonable and unlawfully discriminatory in violation of the Public Utility Code. The OSBA also requested that the filing be suspended and investigated and that the proposed new rates and other tariff changes be rejected to the extent they are found to be unlawful, unjust, unreasonable and unduly discriminatory to any class of customers, including small business customers.

On August 29, 2019, the Commission suspended the filing by operation of law until April 17, 2020 pursuant to Section 1308(d) of the Public Utility Code, unless permitted by the Commission to become effective at an earlier date. The Commission added that investigation and analysis of the proposed tariff filings and the supporting data indicate that the proposed changes in rates, rules and regulations may be unlawful, unjust, unreasonable and contrary to the public interest. The Commission determined that consideration should be given to the reasonableness of Lancaster’s existing rates, rules and regulations. The Commission assigned the case to the Office of Administrative Law Judge for the prompt scheduling of hearings as may be necessary culminating in the issuance of a Recommended Decision.

As a result, on September 3, 2019, a hearing notice was issued establishing a prehearing conference for this matter for Monday, September 9, 2019 at 10:00 a.m. in Hearing Room 5 of the Commonwealth Keystone Building in Harrisburg and assigning me as the presiding officer. A prehearing conference order was issued on September 3, 2019 setting forth various rules that would govern the prehearing conference.

The prehearing conference convened on September 9, 2019 as scheduled. John J. Gallagher, Esquire appeared on behalf of Lancaster; Carrie Wright, Esquire appeared on behalf of I&E; Christine Maloni Hoover, Esquire, Harrison Breitman, Esquire and Phillip Demanchick, Esquire appeared on behalf of OCA; and Shelby Linton Keddie, Esquire appeared on behalf of OSBA.

The purpose of this scheduling order is to memorialize the matters agreed upon at the prehearing conference.

As an initial matter, the formal complaints filed by the OCA and OSBA were formally consolidated with the Commission’s investigation and it was confirmed that there are no other formal complaints or petitions to intervene pending in this matter. The company also confirmed that the suspension period for this proceeding ends after the Commission’s Public Meeting scheduled for April 16, 2020.

Next, the parties agreed to the following litigation schedule:

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| Other parties’ Direct Testimony | October 17, 2019 |
| All parties’ Rebuttal Testimony | November 14, 2019 |
| All parties’ Surrebuttal Testimony | November 25, 2019 |
| Rejoinder Outline | December 3, 2019 |
| Hearings | December 4-6, 2019 |
| Main Briefs | January 3, 2020 |
| Reply Briefs | January 13, 2020 |

The evidentiary hearings will be held in Harrisburg and begin at 10:00 a.m.

The parties also discussed the need to modify the Commission’s regulations regarding discovery. The parties agreed that the modifications proposed by the OCA would be adopted with one modification made by I&E. The OCA’s proposed modifications are:

* 1. Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service, rather than the fifteen (15) provided for in 52 Pa. Code § 5.342(d).
  2. Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) days of service of the interrogatories.
  3. Motions to compel the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.
  4. Answers to motions to compel shall be filed within three (3) calendar days of service of such motions.
  5. Ruling over such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.
  6. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within seven (7) calendar days.
  7. Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
  8. Answers to on-the-record data requests shall be served in-hand within seven (7) calendar days of the requests.
  9. Discovery served after 12 noon on a Friday will be deemed to have been served on the following business day for purposes of tracking due dates.
  10. Due dates are “in-hand” and that electronic service on the due date will satisfy the “in-hand” requirement, where such service is immediately followed by a hard copy sent by first-class mail.

I&E’s proposed modification was to #9 so that discovery served after noon on Friday and the day before a state holiday would be deemed to have been served on the following business day for purposes of tracking due dates. There were no objections to these modifications so they will be adopted as part of this proceeding.

A discussion was also held regarding public inputs and it was determined that no public input hearings would be scheduled at this time. The parties were asked to indicate as soon as possible whether there was a need for public input hearings given the logistical efforts required in establishing public input hearings.

A discussion was also held regarding the need for a protective order to govern the treatment of information alleged to be proprietary. The parties indicated that there was no need for a protective order at this time. To the extent that a need arises, the parties should attempt to submit a joint proposal for a protective order. In addition, the parties are reminded that the treatment of information alleged to be proprietary must be balanced against Commission regulations that also provide that the Commission’s records, including the record of this proceeding, may be accessed by the public. As a result, while the parties can exchange whatever information they allege to be proprietary amongst themselves, they are encouraged to minimize or eliminate submitting for admission into the record material that is marked as proprietary to ensure greatest public access to the record of this proceeding.

Finally, the parties were reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are reminded, however, that decisions of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Any settlement submitted for approval must be supported by substantial evidence.

To the extent there is no settlement, the parties will be required to attach to their briefs the standard uniform tables that conform the parties’ various positions on particular issues. Those tables will be provided at the evidentiary hearing in December if necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by the Office of Consumer Advocate at docket number C-2019-3011834 and the formal complaint filed by the Office of Small Business Advocate at docket number C-2019-3012096 are hereby consolidated with the Commission’s investigation at docket number R-2019-3010955.
2. That the following schedule is adopted for this proceeding:

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| --- | --- |
| Other parties’ Direct Testimony | October 17, 2019 |
| All parties’ Rebuttal Testimony | November 14, 2019 |
| All parties’ Surrebuttal Testimony | November 25, 2019 |
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1. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officer. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officers no later than 4:30 p.m. on the dates listed. Parties may serve the documents listed above via e-mail to meet this requirement, with hard copy to follow by regular first class mail, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
2. That written testimony shall comply with the requirements of 52 Pa.Code §5.412 and shall be marked with numerical, sequential statement numbers. Parties serving pre-served testimony pursuant to 52 Pa.Code § 5.412(f) are required, within thirty (30) days after the final hearing, to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.
3. That all parties shall comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
4. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373, as modified above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. All motions to compel shall contain a certification by counsel setting forth the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain this certification, the parties will be directed to pursue informal discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§5.361, 5.371-5.372.
5. That any evidentiary hearing will be held in Harrisburg and will commence at 10:00 a.m. unless changed by the presiding officer.
6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§5.232 and 5.234.
7. That any evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code §5.223(a).

Date: September 11, 2019 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

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