

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission (water)	:	R-2019-3008947
Office of Consumer Advocate	:	C-2019-3009591
Gary and Mary Kutzelman	:	C-2019-3011086
	:	
v.	:	
	:	
Community Utilities of Pennsylvania, Inc. (water)	:	

Pennsylvania Public Utility Commission (wastewater)	:	R-2019-3008948
Office of Consumer Advocate	:	C-2019-3009592
Gary and Mary Kutzelman	:	C-2019-3011091
	:	
v.	:	
	:	
Community Utilities of Pennsylvania, Inc. (wastewater)	:	

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision recommends the Commission approve the Joint Petition for Full Settlement of Rate Proceeding (Settlement) dated September 6, 2019, filed by Community Utilities of Pennsylvania Inc. Water and Wastewater Divisions, the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission, and the Office of Consumer

Advocate (hereinafter collectively referred to as “Joint Petitioners”). All active parties¹ in this proceeding have agreed to the Settlement.

The Company proposed a rate increase of \$362,019 (or 26.34%) for total annual water revenues for water service and a rate increase of \$378,770 (or 20.8%) for total annual wastewater revenues for wastewater services. Instead, the Settlement is designed to produce an increase of annual water revenue of \$315,000 (or 23%) and annual wastewater revenue of \$224,000 (or 12.3%). This recommended decision approves the Settlement without modification because it is in the public interest and is supported by substantial evidence. The suspension period for this matter ends on January 1, 2020.

HISTORY OF THE PROCEEDING

On April 1, 2019, Community Utilities of Pennsylvania, Inc. (CUPA), filed Supplement No. 5 to Tariff Water–Pa. P.U.C. No. 1 to become effective June 1, 2019. The subject tariff supplement would increase CUPA’s total annual water revenues for water service by approximately \$362,019 or 26.34%.

Also, on April 1, 2019, Community Utilities of Pennsylvania, Inc. – Wastewater Division (CUPA-WD), filed Supplement No. 3 to Tariff Wastewater–Pa. P.U.C. No. 1 to become effective June 1, 2019. The subject tariff supplement would increase CUPA-WD’s total annual wastewater revenues for wastewater service by approximately \$378,770 or 20.8%.

On May 1, 2019, the Office of Consumer Advocate (OCA) filed formal Complaints, Public Statements, Verifications, and a Notice of Appearance on behalf of Christine Hoover, Esq. The Complaints were docketed at C-2019-3009591 (water) and C-2019-3009592 (wastewater).

¹ Two customers filed Formal Complaints against the Company’s proposed rate increases. These customers reside at the same service address. However, the customers did not attend the Prehearing Conference, did not file testimony, and did not otherwise actively participate in this matter. As indicated below, the OCA served a copy of the Settlement on the inactive customer Complainants and they did not respond.

By Orders entered May 9, 2019, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of rates, rules, and regulations contained in CUPA's proposed Supplement No. 5 to Tariff Water–Pa. P.U.C. No. 1 and CUPA-WD's proposed Supplement No. 3 to Tariff Wastewater–Pa. P.U.C. No. 1. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. § 1308(d), both Tariffs were suspended by operation of law until January 1, 2020, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the existing rates, rules, and regulations of CUPA and CUPA-WD. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission's May 9, 2019, Order, the matter was assigned to the undersigned Administrative Law Judge F. Joseph Brady.

On May 14, 2019, and May 15, 2019, a Notice and Prehearing Conference Order were issued, respectively, scheduling an initial prehearing conference for Tuesday, May 28, 2019, at 10:00 a.m.

On May 24, 2019, Prehearing Memoranda were filed by CUPA, the OCA, and the Bureau of Investigation and Enforcement (I&E).

A dual location Prehearing Conference was held on May 28, 2019. Counsel for CUPA, the OCA, and I&E participated.

On May 28, 2019, Allison C. Kaster, Esquire, filed a Notice of Appearance on behalf of I&E.

On June 4, 2019, Prehearing Order No. 2 was issued memorializing the matters decided and agreed upon by the parties attending the May 28, 2019 Prehearing Conference.

On June 21, 2019, formal Complaints were filed by Gary and Mary Kutzelman against CUPA water and wastewater that were docketed respectively at C-2019-3011086 (water) and C-2019-3011091 (wastewater).

On July 15, 2019, Public Input Hearings were held at the Penn Estates Community Center in East Stroudsburg, PA at 1:00 p.m. and the Hanover Township Community Center in Bethlehem, PA at 6:00 p.m.

During the Penn Estates Public Input Hearing, the record was held open for the admission of documents related to the testimony of four consumers, subject to any objections of the Company. (See e.g. Tr. at 45-46). On July 22, 2019, Counsel for the OCA provided and requested the admission into the record of late filed exhibits identified as: Krupinski Exhibit No. 1; Nevil Exhibit No. 1; Holloway Exhibit No. 1; Holloway Exhibit No. 2 (Redacted); and Bruno Exhibit No. 1. There were no objections filed to the admission of these exhibits into the record.

On August 1, 2019, Prehearing Order No. 3 was issued admitting the late filed exhibits identified as: Krupinski Exhibit No. 1; Nevil Exhibit No. 1; Holloway Exhibit No. 1; Holloway Exhibit No. 2 (Redacted); and Bruno Exhibit No. 1.

On August 22, 2019, an evidentiary hearing convened as scheduled for the sole purpose of admitting uncontested testimony and exhibits into the record. The testimony and exhibits support the settlement reached by the Joint Petitioners. The following testimony and exhibits were admitted into the record without objection:

- (1) CUPA St. 1 (Water) (Direct Testimony of John P. Trogonoski with Exhibits JPT 1-10)
- (2) CUPA St. 1 (Wastewater) (Direct Testimony of John P. Trogonoski with Exhibits JPT 1-10)
- (3) CUPA St. 1-R (Water and Wastewater) (Rebuttal Testimony of John P. Trogonoski)

- (4) CUPA St. 1-RJ (Water and Wastewater) (Rejoinder Outline of John Trogonoski)
- (5) CUPA St. 2 (Water) (Direct Testimony of Steven M. Lubertozzi)
- (6) CUPA St. 2 (Wastewater) (Direct Testimony of Steven M. Lubertozzi)
- (7) CUPA St. 2-R (Water) (Rebuttal Testimony of Steven M. Lubertozzi)
- (8) CUPA St. 2-R (Wastewater) (Rebuttal Testimony of Steven M. Lubertozzi)
- (9) CUPA St. 2-RJ (Water and Wastewater) (Rejoinder Outline of Steven M. Lubertozzi)
- (10) CUPA St. 3 (Water) (Direct Testimony of Perry Brown with Errata and Exhibits PAB 1-2)
- (11) CUPA St. 3 (Wastewater) (Direct Testimony of Perry Brown with Errata and Exhibits PAB 1-2)
- (12) CUPA St. 3-R (Water) (Rebuttal Testimony of Perry Brown with Errata and Exhibit PAB 1R) (Public and Confidential)
- (13) CUPA St. 3-R (Wastewater) (Rebuttal Testimony of Perry Brown with Exhibit PAB 1R with Errata)
- (14) CUPA St. 3-RJ (Water) (Rejoinder Outline of Perry Brown)
- (15) CUPA St. 3-RJ (Wastewater) (Rejoinder Outline of Perry Brown)
- (16) CUPA St. 4 (Water) (Direct Testimony of Jeffrey Woolard with Exhibit JW-1, Adopted in full by Justin Kersey)
- (17) CUPA St. 4 (Wastewater) (Direct Testimony of Jeffrey Woolard with Exhibit JW-1, Adopted in full by Justin Kersey)
- (18) CUPA St. 4-R (Water) (Rebuttal Testimony of Justin Kersey with Exhibits JK 1R – 6R)
- (19) CUPA St. 4-R (Wastewater) (Rebuttal Testimony of Justin Kersey with Exhibits JK 1R – 4R)

- (20) CUPA St. 5 (Water and Wastewater) (Direct Testimony of Gordon Barefoot with Exhibits GB1 – GB2) (Public and Highly Confidential)
- (21) CUPA St. 6 (Water) (Direct Testimony of Scott Miller with Exhibits SAM-1 and SAM-2)
- (22) CUPA St. 6 (Wastewater) (Direct Testimony of Scott A. Miller with Exhibits SAM-1 and SAM-2)
- (23) CUPA St. 6-R (Water) (Rebuttal Testimony of Scott A. Miller with Exhibit SAM 1-R)
- (24) CUPA St. 6-R (Wastewater) (Rebuttal Testimony of Scott A. Miller with Exhibit SAM 1-R)
- (25) CUPA St. 6-RJ (Water) (Rejoinder Outline of Scott A. Miller)
- (26) OCA St. 1 (Water) (Direct Testimony of Stacy L. Sherwood with Appendices A, B, and C)
- (27) OCA St. 1 (Wastewater) (Direct Testimony of Stacy L. Sherwood with Appendices A, B, and C)
- (28) OCA St. 2 (Water and Wastewater) (Direct Testimony of Aaron L. Rothschild with Schedules ALR 1-7 and Appendix A)
- (29) OCA St. 3 (Water) (Direct Testimony of Jerome D. Mierzwa with Appendix A)
- (30) OCA St. 4 (Water) (Revised Direct Testimony of Terry L. Fought with Exhibits TLF 1-3 and Appendix A)
- (31) OCA St. 4 (Wastewater) (Direct Testimony of Terry L. Fought with Appendix A)
- (32) OCA St. 1-SR (Water) (Surrebuttal Testimony of Stacy L. Sherwood with Schedules SLS 1-5)
- (33) OCA St. 1-SR (Wastewater) (Surrebuttal Testimony of Stacy L. Sherwood with Schedules SLS 1-5)
- (34) OCA St. 2-SR (Water and Wastewater) (Surrebuttal Testimony of Aaron L. Rothschild)
- (35) OCA St. 3-SR (Water) (Surrebuttal Testimony of Jerome D. Mierzwa)

- (36) OCA St. 4-SR (Water) (Surrebuttal Testimony of Terry L. Fought with Exhibit TLF-4)
- (37) I&E St. 1 (Water) (Direct Testimony of Brenton Grab with Exhibit 1)
- (38) I&E St. 2 (Water) (Direct Testimony of Anthony Spadaccio with Exhibit 2)
- (39) I&E St. 3 (Water) (Direct Testimony of Esyan A. Sakaya with Exhibit 3)
- (40) I&E St. 1-SR (Water) (Surrebuttal of Brenton Grab with Exhibit 1-SR)
- (41) I&E St. 2-SR (Water) (Surrebuttal Testimony of Anthony Spadaccio)
- (42) I&E St. 3-SR (Water) (Surrebuttal Testimony of Esyan A. Sakaya)
- (43) I&E St. 1 (Wastewater) (Direct Testimony of Brenton Grab with Exhibit 1)
- (44) I&E St. 2 (Wastewater) (Direct Testimony of Anthony Spadaccio with Exhibit 2)
- (45) I&E St. 3 (Wastewater) (Direct Testimony of Holly Gilliland with Exhibit 3)
- (46) I&E St. 1-SR (Wastewater) (Surrebuttal Testimony of Brenton Grab with Exhibit 1-SR)
- (47) I&E St. 2-SR (Wastewater) (Surrebuttal Testimony of Anthony Spadaccio)
- (48) I&E St. 3-SR (Wastewater) (Surrebuttal Testimony of Holly Gilliland)

All testimony was accompanied with verification statements by the corresponding witness.

On September 6, 2019, a Joint Petition for Full Settlement of Rate Proceeding was filed and served. Signatories to the Joint Petition include CUPA, OCA and I&E. Each of the Settling Parties provided a Statement in Support appended to the Joint Petition.

Also on September 6, 2019, OCA served a copy of the Joint Petition and attachments on the *pro se* Complainants, along with a letter instructing the Complainants to review the Joint Petition and indicate to the ALJ in writing by September 16, 2019, whether they choose to join in the Joint Petition, oppose the Joint Petition, or not oppose the Joint Petition. Enclosed was a signature page that the *pro se* Complainants could sign and return to the ALJ if they wished to join the Joint Petition. The *pro se* Complainants did not file a response.

By Interim Order dated September 10, 2019, I directed the record to close on September 16, 2019.

On September 24, 2019, the Joint Parties filed an Errata Joint Petition for Full Settlement of Rate Proceeding.

This matter is ripe for recommended decision.

PUBLIC INPUT HEARINGS

A. Penn Estates Community Center, East Stroudsburg, PA

On July 15, 2019, an in-person public input hearing convened at 1:00 p.m. Seventeen people testified under oath. All witnesses either questioned the proposed rate increase or affirmatively opposed it.

Craig Morris testified that he believes rate hikes are inevitable but if CUPA has issues with its equipment, the money should come out of its operating or capital budget and not rate increases. Mr. Morris also testified that he has not seen any pipes or sewer equipment replaced where he lives in the past 20 years. Tr. 33-35.

Debra Krupinski testified that she has resided at Penn Estates for the past 21 years and until recently, drank the tap water. Ms. Krupinski stated that she has an autoimmune disease

that she suspects she may have contracted from the tap water. Ms. Krupinski also mentioned that CUPA performed several tests of the water quality at her tap.² Tr. 38-44.

Gary Campbell testified that he has received two notices in the past year of the minimum standards being exceeded for two different parameters and that he received those notices well after the tests were run. Mr. Campbell also testified that the sediment in his water caused him to have his water heater replaced twice in the past 15 years and if he was going to be getting a rate increase, he wanted his water quality to improve. Tr. 47-49.

In his testimony, Luna Mishoe suggested that any rate increase be postponed until a five-year plan showing all of the changes, improvements, and associated costs could be produced and reviewed by customers. He does not believe the current filing satisfies this request. Tr. 52-55.

Nanette DeBartolo testified that she opposes the increase because the Company has received rate increases in the past, but the overall water quality has gone down. Tr. 56-58.

Bettyanne Nevil testified that her home is one of the homes that was selected to be tested and to her knowledge it has never failed. She also testified that the Company issued a water conservation notice asking consumers to conserve water and check for water leaks in the area, which she feels should be the responsibility of the Company.³ Ms. Nevil also questioned what customers are getting in return for the increase in rates. Tr. 59-61.

² Ms. Krupinski provided a copy of the test results performed on August 8, 2018, which was marked as Krupinski Exhibit No. 1 and entered into the record as a late-filed exhibit pursuant to my August 1, 2019, Prehearing Order No. 3.

³ Ms. Nevil provided a copy of an e-mail from the Company indicating that the water conservation notice was lifted as of July 15, 2019, which was marked as Nevil Exhibit No. 1 and entered into the record as a late-filed exhibit pursuant to my August 1, 2019, Prehearing Order No. 3.

Gloria Holloway testified that she received a letter from the Company indicating there was an elevated risk of disease-causing organisms in the water.⁴ Ms. Holloway also testified regarding personal billing issues she is having with the Company.⁵ Tr. 67-77.

Keesha Bruno testified that she received a water quality report from the Company stating that the Arsenic level of the water was elevated.⁶ Ms. Bruno stated that she has since switched to bottled water for all of her drinking and cooking needs. Ms. Bruno also wants more information why an increase in rates is necessary if the water quality has not improved. Tr. 79-80.

Lorraine Mazzie testified that she has lived in the Penn Estates community for 29 years and has replaced her water heater four times, which she finds excessive. Ms. Mazzie also questioned why the Company was not more aggressive in notifying customers about contaminated water. Tr. 84-86.

Stan Zylik testified regarding reports of low chlorine levels in the water and questioned why that was allowed to go on for several days. Mr. Zylik also questioned the frequency and amount of the proposed rate increases. Tr. 89-91.

Brinson Howard testified that he opposed the rate increase and that overall service has gone down since the last rate increase. Mr. Howard testified that customer service from the Company is very poor as well. Mr. Howard also stated that due to the poor water quality, he has replaced his hot water heater tanks four times in the past four years. Tr. 93-96.

⁴ Ms. Holloway provided a copy of the letter, which was marked as Holloway Exhibit No. 1 and entered into the record as a late-filed exhibit pursuant to my August 1, 2019 Prehearing Order No. 3.

⁵ Ms. Holloway provided copies of several months of water bills, which was marked as Holloway Exhibit No. 2 and entered into the record as a late-filed exhibit pursuant to my August 1, 2019, Prehearing Order No. 3.

⁶ Ms. Bruno provided a copy of the Annual Water Quality Report for 2018, which was marked as Bruno Exhibit No. 1 and entered into the record as a late-filed exhibit pursuant to my August 1, 2019, Prehearing Order No. 3.

Nanette Nelson testified that she does not trust the quality of her tap water and therefore uses bottled water. Ms. Nelson stated that an increase in the rates is unfair because she does not believe CUPA is doing everything it should be doing to provide clean water. Tr. 103-105.

Christine Dodson testified that she is against the rate increase as being too high. Ms. Dodson stated that a cost analysis should be done as well. Tr. 107-112.

Sean Reilly testified that he is concerned about having to pay an increase in rates because the water is more expensive to treat in another area also owned by CUPA. Mr. Reilly also expressed concerns about whether the proposed new rates include capital costs and their eventual payoffs. Tr. 113-118.

Carmen Rivera testified that she is against the increase because she does not see how the money is going to be used for improvement. Ms. Rivera also stated that her surgery incisions only healed once she started using bottled water on them, instead of tap water. Tr. 119-122.

Kathleen Mazol testified that her research indicates that CUPA has a history of purchasing small utilities and then raising their rates over short periods of time and she would like the Commission to look into this. Tr. 126-127.

Raymond Mazzie testified that he is concerned about the property values in Penn Estates if the water rates get too high along with the perception that the quality of the water is poor. Tr. 128-136.

B. Hanover Township Community Center, Bethlehem, PA

On July 15, 2019, an in-person public input hearing convened at 6:00 p.m. Three people testified under oath that they opposed the proposed rate increase.

Vincent Horvath testified that he was concerned with the proposed unification of Westgate with Penn Estates. Mr. Horvath alleged that Penn Estates has wells, pumping stations,

and treatment facilities while Westgate is a pure distribution system that basically just receives water and distributes it. Mr. Horvath's position was that it does not make sense to try to unify these two systems. He is also concerned that money earmarked for capital improvements will all be spent at Penn Estates. Lastly, Mr. Horvath suggested that instead of increasing the fixed portion of the bill, any increase should be based on the volume portion to encourage conservation of water. Tr. 152-159, 164-167.

Mary Leslie Kingston testified on behalf of Kingston Oral Surgery, which is a customer of CUPA water. Ms. Kingston testified that she is dissatisfied with what she perceives to be constant rate increases. She also is not happy with the quality of the water and stated they need to bring in distilled water to use in their machines. Tr. 159-164.

Roger Cornish testified that he is against the rate increase as excessive. Tr. 167-169.

TERMS AND CONDITIONS OF THE SETTLEMENT PETITION

The principal terms and conditions of the proposed Settlement, contained in Section III, Paragraphs 20-36 of the Settlement, are as follows:

A. Revenue Requirement Increase - Water

20. Upon the Commission's approval of this Settlement, but no earlier than January 1, 2020, the Company will be permitted to charge the rates for water service set forth in the proposed Tariff Supplement attached hereto as **Appendix A** ("Settlement Rates"), to become effective upon one day's notice. Instead of the \$362,019 increase requested in the filing, the Settlement Rates are designed to produce an increase of annual water revenue of \$315,000 as shown in greater detail on the Proof of Revenues attached hereto as **Appendix B**.

21. The revenue requirement for the Company’s water operations does not include the following items in rate base: (1) rate case expense, (2) tank inspection expense, and (3) Penn Estates Meters NBV.

B. Revenue Requirement Increase – Wastewater

22. Upon the Commission’s approval of this Settlement, but no earlier than January 1, 2020, the Company will be permitted to charge the rates for wastewater service set forth in the proposed Tariff Supplement attached hereto as **Appendix A** (“Settlement Rates”), to become effective upon one day’s notice. Instead of the \$378,770 increase requested in the filing, the Settlement Rates are designed to produce an increase of annual wastewater revenue of \$224,000 as shown in greater detail on the Proof of Revenues attached hereto as **Appendix B**.

23. The revenue requirement for the Company’s wastewater operations does not include the following items in rate base: (1) rate case expense, (2) multi-year testing, and (3) Delaware River Basin Committee permit expense.

C. Rate Design and Structure

24. Water – Rates will be designed to achieve full unitization of rates across the two water service territories. 100% of the increase will be allocated to volumetric rates. The volumetric rate for all meter sizes per 1,000 gal. per month is as follows:

Volumetric Charges

Service Territory	Current	Proposed	Settlement
Westgate	\$ 7.27	\$ 6.45	\$ 9.28
Penn Estates	\$ 6.26	\$ 6.45	\$ 9.28

Flat Charges – Westgate

Meter Size	Current	Proposed	Settlement
5/8”	\$ 17.25	\$ 29.15	\$ 17.25
1”	\$ 43.13	\$ 69.20	\$ 43.13
1.5”	\$ 86.25	\$ 135.90	\$ 86.25
2”	\$ 138.00	\$ 216.00	\$ 138.00

Flat Charges – Penn Estates

Meter Size	Current	Proposed	Settlement
5/8”	17.25	29.15	17.25
1”	43.13	69.20	43.13
1.5”	86.25	135.90	86.25
2”	138.00	216.00	138.00

25. Wastewater – Rates will be designed to achieve full unitization of rates across the two wastewater territories. Monthly rates for each class of customers have been adjusted using the 12.36% annual incremental revenue increase. The flat rate for each customer class per month are as follows:

Wastewater Flat Charges

Service Territory	Current	Proposed	Settlement
Penn Estates Residential	\$ 46.56	\$ 59.55	\$ 55.39
Penn Estates Commercial	\$ 46.56	\$ 59.55	\$ 55.39
Penn Estates Availability	\$ 11.68	\$ 17.25	\$ 13.12
Utilities Inc. of Pennsylvania Inc Residential	\$ 52.59	\$ 59.55	\$ 55.39
Utilities Inc. of Pennsylvania Inc Commercial	\$ 52.59	\$ 59.55	\$ 55.39
Utilities Inc. of Pennsylvania Inc School	\$ 1.06	\$ 1.26	\$ 1.19

26. The baseline items determined in the Company’s most recent Purchased Water Adjustment Clause (PWAC) calculation and used in this proceeding are:
(50,613,975 gallons X \$3.969/1,000 gallons) + (\$17,486.52 fixed charges) = \$218,373.39

27. The Company will continue to impose the present fire hydrant charge for those fire hydrants that meet fire code requirements. The Company will provide a count of billed fire hydrants in each service area and a detailed breakdown of the cost for all fire hydrant maintenance and service in its next rate proceeding.

28. The Company will provide the Commission’s Bureau of Technical Utility Services and the signatories to the Settlement with an update to CUPA Supporting Data, Section 1, p. 17 of the water and wastewater filing no later than April 1, 2020,

under this docket number, which should include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2019. An additional update should be provided for actuals through December 31, 2020, no later than April 1, 2021.

29. If the City of Bethlehem files a Section 1308(d) rate increase with the Commission prior to the Company's next base rate proceeding, the Company agrees to initiate a Petition proceeding within 120 days from the date of the City's filing to address consolidation or elimination of the PWAC. If the Company files its next base rate case prior to a Section 1308(d) filing by the City of Bethlehem, all parties reserve the right to address the consolidation or elimination of the PWAC in the Company's next base rate proceeding. The Company reserves the right to claim the costs of the Petition proceeding in the Company's next base rate proceeding and the parties reserve the right to challenge any claim for these expenses.

D. Additional Settlement Terms

30. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue but rather as an agreed-to compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners or to enforce this Settlement.

31. This Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement.

32. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching this Settlement, the Joint Petitioners thoroughly considered all issues and give and take of positions. As a result of that consideration, the Joint Petitioners believe that the settlement agreement meaningfully addresses all such issues raised and therefore should be approved without

modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

33. All Joint Petitioners shall support the Settlement and make reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJ in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

34. The Joint Petitioners recognize that this Joint Petition is a settlement of, and binding upon, only among the parties signing this document. The OCA represents it will, on the date of the signing of this settlement petition, send a letter providing instructions concerning the Complainants' opportunity to address the proposed Settlement. OCA also represents that the letter will explain that the Complainant has until September 16, 2019 to join, disagree but not actively oppose, or object to the proposed settlement and provide contact information for ALJ Brady and the OCA.

35. The Joint Petitioners agree that this document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners and such counterparts shall be considered as one document.

36. The Joint Petitioners agree and request that if the Settlement is approved, the OCA's Formal Complaints in this matter should be marked satisfied and closed due to the Settlement.

DISCUSSION

A. Applicable Law

The purpose of this investigation is to establish rates for CUPA customers which are “just and reasonable” pursuant to Section 1301 of the Public Utility Code, 66 Pa.C.S.A. § 1301.

A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pennsylvania Pub. Util. Comm’n*, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia, 262 U.S. 679, 692-3 (1923).

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission has wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 405 A.2d 1055 (Pa. Cmwlth. 1979).

In addition, it is the policy of the Commission to encourage settlements. 52 Pa.Code § 5.231(a). The Commission has set forth settlement guidelines and procedures for major rate cases at 52 Pa.Code § 69.401, wherein the Commission states:

§ 69.401. General.

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402-69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined. A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

The Settlement, in this case, is a "black box" settlement. This means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has recognized that "black box" settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a

company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.

Pa. Pub. Util. Comm'n v. Peoples TWP LLC, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted).

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 14.

Nevertheless, the Commission has also stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest.

Id. at 15 (citations omitted).

Finally, this recommendation is prepared for the Commission to act in accordance with Section 1308(d) of the Public Utility Code, which states in pertinent part,

Whenever there is filed with the commission by any public utility ... any tariff stating a new rate which constitutes a general rate increase, the commission shall promptly enter into an investigation and analysis of said tariff filing and may by order setting forth its reasons therefore, upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and the commission may, at any time by vote of a majority of members of the commission serving in accordance with law, permit such tariff to become effective, except that absent such order such tariff shall be suspended for a period not to exceed seven months from the time such rate would otherwise become effective. Before the expiration of such seven-month period, a majority of members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefore, granting or denying, in whole or in part, the general rate increase requested.

66 Pa.C.S.A. § 1308(d). Also, Section 315(a) states,

315. Burden of proof

(a) Reasonableness of rates.—In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings and decide the same as speedily as possible.

66 Pa.C.S.A. § 315(a). Consequently, in this proceeding, CUPA has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. Furthermore, the Settling Parties have reached an accord on the issues and claims that arose in this proceeding and submitted a Joint Petition for Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether the Settlement is in the public interest. The Settling Parties have the burden to prove that the Settlement is in the public interest.

B. Analysis

CUPA is a Pennsylvania corporation and is a wholly-owned subsidiary of Utilities, Inc. (UI). See CUPA Statement No. 2, at 3. UI owns approximately 50 water and sewer utilities operating in 17 states, including CUPA. Id. CUPA was incorporated in 2015 for implementation of the merger into a single entity of the three separate wholly-owned Pennsylvania subsidiaries of UI that provided water and sewer services in Pennsylvania. Id. at 4. Those subsidiaries are Penn Estates Utilities, Inc. (“Penn Estates”), Utilities, Inc. of Pennsylvania (“UIP”), and Utilities, Inc. - Westgate (“Westgate”). Id. The merger application was approved by the Commission’s December 3, 2015 Order at Docket No. A-2015-2504889 *et al.* The water subsidiaries that are the subject of this rate increase proceeding are Penn Estates, which has both water and wastewater operations, and Westgate, which has only water operations. See CUPA Statement No. 3, at 2.

The Joint Petitioners submit that the Settlement is in the public interest because it provides for an annual water revenue increase of \$315,000 (or 23%) in lieu of the originally requested \$362,019 (or 26.34%) increase. Further, the flat rate customer charge for water has not changed, and instead the increase has been allocated to volumetric rates. In regard to wastewater, the Joint Petitioners submit that the Settlement is in the public interest because, instead of the \$378,770 (or 20.8%) increase requested in the filing, the Settlement Rates are designed to produce an increase of annual wastewater revenue of \$224,000 (or 12.3%).

According to the Joint Petitioners, the Settlement achieves a reasonable and beneficial result while curtailing the costs of litigation in avoiding evidentiary hearings, briefing, and, expending further time by the Commission and the parties. The Joint Petitioners arrived at the Settlement terms after extensive review of discovery by the statutory advocates, a tour of CUPA’s facilities, and engaging in in-depth discussions. They state that the Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. The Settling Parties advocate that the proposed

Settlement is just, reasonable, in the public interest and should be approved without modification.

The individual parties that make up the Joint Petitioners offer further arguments of why the Settlement is in the public interest in their statements of support attached to the Joint Petition. These reasons are provided in the analysis below.

1. Revenue Requirement Increase – Water

The Settlement provides for rates designed to produce an increase of annual water revenue of \$315,000, instead of the \$362,019 increase requested in the initial filing. See Settlement at ¶ 20. In its Statement in Support, the Company noted that under present rates, it is not able to meet its operating costs and earn a reasonable return on its investment, and without appropriate rate relief, CUPA's ability to continue to provide environmentally safe, reliable and efficient water utility services to its customers and meet its financial obligations will be placed in jeopardy. See CUPA Statement in Support at 11. The Company further explains that for the forecasted 12 months ending December 31, 2020, CUPA is projected to earn a 3.19% return on equity (ROE), which is far below the ROEs recommended by CUPA's cost of capital witness. Id. at 11-12.

CUPA also points out that it made multiple water infrastructure improvements in the past year and more are planned in the future test period. Id. at 12; CUPA-W St. No. 2 at 7; CUPA-W St. No. 4 (Mr. Kersey adopted in full the testimony of Mr. Woolard).

Lastly, CUPA makes note of the shortfall in revenues that the water divisions are experiencing due to declining usage. See CUPA Statement in Support at 12. CUPA states that declining usage will continue to erode at revenues, impacting the opportunity for the Company to earn a reasonable return. See CUPA-W St. No. 2 at 7.

In CUPA's view, the revenue increase proposed in the Settlement is in the public interest because it provides CUPA with the ability to continue to provide environmentally safe, reliable and efficient water services to its customers and meet its financial obligations. Id. at 13.

In its Statement in Support, the OCA submits that as the proceeding progressed, the Company corrected its rate filings to reflect several changes to the Company's cost of service, including, among other things, the misallocation of approximately \$273,218 in additional test year plant to the Company's wastewater rate base. See OCA Statement in Support at 6. As a result of these changes, the Company revised its revenue requirement for both its water and wastewater operations. Id. The Company's revised proposal was to increase its annual water revenue for its water operations by approximately \$420,044 (or 30.7%). Id. Thus, the \$315,000 (or 23%) annual water revenue increase agreed to under the Settlement, is \$105,044 (or 25%) less than what was proposed by the Company.

The OCA also stated that the Settlement represents a "black box" approach to the revenue requirement including cost of capital issues. Id. at 7. The OCA further noted that "black box" settlements avoid the need for protracted disputes over the merits of individual revenue requirement adjustments and avoid the need for a diverse group of stakeholders to attempt to reach a consensus on each of the disputed accounting and ratemaking issues raised in this matter, as policy and legal positions can differ. Id. As such, the parties have not specified a dollar amount for each issue or adjustment raised in this case. Id. Attempting to reach agreement regarding each adjustment in this proceeding would have likely prevented any settlement from being reached. Id. at 8.

The OCA concluded that based on its analysis of CUPA's filing, discovery responses received, and testimony by all parties, the revenue increase under the Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case and is in the public interest. Id. Further, the increase agreed to in the Settlement provides adequate funding to allow the Company to continue to provide safe, adequate, reliable, and continuous service. Id.

In its Statement in Support, I&E fully supports the \$315,000 annual water revenue increase agreed to under the Settlement. See I&E Statement in Support at 5. In addition to the same “black box” settlement arguments advanced by CUPA and the OCA, I&E states that it analyzed the ratemaking claims contained in base rate filings including operating and maintenance expenses, rate base, taxes, cash working capital, rate structure, capital structure, and the cost of common equity and long-term debt. Id. As a result, I&E’s stated recommendations on the identified issues were set forth in I&E’s extensive direct and surrebuttal testimony, which indicated an increase of \$308,337 for annual water revenue. Id. Therefore, the \$315,000 increase is within the level advanced on the evidentiary record and reflects a full compromise of all revenue-related issues raised by the parties. Id.

I agree with the Settling Parties that the provisions of the proposed Settlement increasing the water revenue are in the public interest. The \$315,000 increase in annual water revenue proposed in the Settlement is \$105,044 less than the revised proposed increase of \$420,044 and \$47,019 less than the original proposed increase of \$362,019. This increase will enable CUPA to cover its expenses and continue to invest in facilities, which will allow the Company to provide quality water service to its customers at reasonable rates.

2. Revenue Requirement Increase – Wastewater

The Settlement provides for rates designed to produce an increase of annual wastewater revenue of \$224,000, instead of the \$378,770 increase requested in the initial filing. See Settlement at ¶ 23. In its Statement in Support, like water, the Company noted that under present rates, it is not able to meet its operating costs and earn a reasonable return on its investment, and without appropriate rate relief, CUPA’s ability to continue to provide environmentally safe, reliable and efficient wastewater services to its customers and meet its financial obligations will be placed in jeopardy. See CUPA Statement in Support at 13. The Company further explains that for the forecasted 12 months ending December 31, 2020, CUPA is projected to earn a 4.18% return on equity (ROE), which is far below the ROEs recommended by CUPA’s cost of capital witness. Id.

CUPA also points out that it made multiple wastewater infrastructure improvements in the past year and more are planned in the future test period. Id.; CUPA WW St. No. 2 at 6-7; CUPA WW St. No. 4 (Mr. Kersey adopted in full the testimony of Mr. Woolard).

In CUPA's view, the revenue increase proposed in the Settlement is in the public interest because it provides CUPA with the ability to continue to provide environmentally safe, reliable and efficient wastewater services to its customers and meet its financial obligations.

In its Statement in Support, the OCA submitted that as a result of the previously discussed misallocation and revised revenue requirements, the Company revised its proposal to increase its annual wastewater revenue for its wastewater operations to approximately \$339,391 (or 18.6%). See OCA Statement in Support at 6. Thus, the \$224,000 (or 12.3%) annual wastewater revenue increase agreed to under the Settlement is \$115,331 (or 34%) less than what was proposed by the Company.

The OCA also stated that the same reasons that the "black box" approach is in the public interest regarding the annual increase in water revenue also apply to the proposed annual increase in wastewater revenue. Thus, the OCA concluded that the increase agreed to in the Settlement provides adequate funding to allow the Company to continue to provide safe, adequate, reliable, and continuous service. Id.

In its Statement in Support, I&E reiterated the same reasons it was in support of the annual water increase apply to the wastewater increase as well. I&E fully supports the \$224,000 annual wastewater revenue increase agreed to under the Settlement. See I&E Statement in Support at 5. In addition to the same "black box" settlement arguments advanced by CUPA and the OCA, I&E states that it analyzed the ratemaking claims contained in base rate filings including operating and maintenance expenses, rate base, taxes, cash working capital, rate structure, capital structure, and the cost of common equity and long-term debt. Id. As a result, I&E's stated recommendations on the identified issues were set forth in I&E's extensive direct and surrebuttal testimony, which indicated an increase of \$195,899 for annual wastewater

revenue. Id. Therefore, the \$224,000 increase is within the level advanced on the evidentiary record and reflects a full compromise of all revenue-related issues raised by the parties. Id.

I agree with the Settling Parties that the provisions of the proposed Settlement increasing the wastewater revenue are in the public interest. The \$224,000 increase in annual wastewater revenue proposed in the Settlement is \$115,331 less than the revised proposed increase of \$339,391 and \$154,770 less than the original proposed increase of \$378,770. This increase will enable CUPA to cover its expenses and continue to invest in facilities, which will allow the Company to continue to provide quality wastewater service to its customers at reasonable rates.

3. Rate Design and Rate Structure

CUPA believes that the Settlement represents a reasonable step towards consolidation or unitization of rates for both water and wastewater divisions respectively. See CUPA Statement in Support at 14. CUPA states that the consolidation or unitization of rates between a utility company's divisions is a concept that is favored by the Commission⁷ and notes that consolidated rates will allow the Company to spread capital costs over a larger base of customers, ultimately benefitting and protecting all customers from rate shock. Id. The Company believes that in the long-term, unitized rates will strengthen CUPA and allow its customers to enjoy lower rates via fewer rate cases and lower rate case expense. Id.

CUPA agreed to leave the flat rate customer charge for water unchanged, and instead, allocate the increase to the volumetric rates. See Settlement at ¶ 24. A comparison of monthly water rates per 1,000 gallons is shown below:

⁷ *Pa. Pub. Util. Comm'n v. Superior Water Co., Inc.*, Docket No. R-2008-2039261 at 26 (Opinion and Order entered February 5, 2009) (“For years the Commission’s policies and determinations have supported single tariff pricing and rate consolidation in acquisitions and rate cases. As we have often noted, the benefits of single tariff pricing outweigh its negative aspect.”)

Volumetric Charges

Service Territory	Current	Proposed	Settlement
Westgate	\$ 7.27	\$ 6.45	\$ 9.28
Penn Estates	\$ 6.26	\$ 6.45	\$ 9.28

Flat Charges – Westgate

Meter Size	Current	Proposed	Settlement
5/8”	\$ 17.25	\$ 29.15	\$ 17.25
1”	\$ 43.13	\$ 69.20	\$ 43.13
1.5”	\$ 86.25	\$ 135.90	\$ 86.25
2”	\$ 138.00	\$ 216.00	\$ 138.00

Flat Charges – Penn Estates

Meter Size	Current	Proposed	Settlement
5/8”	\$ 17.25	\$ 29.15	\$ 17.25
1”	\$ 43.13	\$ 69.20	\$ 43.13
1.5”	\$ 86.25	\$ 135.90	\$ 86.25
2”	\$ 138.00	\$ 216.00	\$ 138.00

In its Statement in Support, the OCA submits that the Company originally intended to allocate the entire water rate increase to the fixed customer charge. See OCA Statement in Support at 8. As a result, the Company proposed to increase the customer charge for Penn Estates and Westgate customers by nearly 70% above current rates. Id. The OCA further stated that dramatically increasing the fixed portion of a customer’s bill provides less incentive for that customer to conserve water, as opposed to increasing the volumetric rate. Id. Moreover, the Company’s proposal would proportionally place a larger impact on lower volume users, instead of larger volume users that typically place more costs on the system. Id. at 9. Lastly, the OCA noted that this proposal violates principles of gradualism by increasing the customer charge by nearly 70%. Id. However, all of these issues have been avoided because the Settlement states that the entire increase will be allocated to the volumetric rate as opposed to the fixed customer charge.

In regard to wastewater, the OCA noted that the Settlement provides that the Company shall consolidate the wastewater rates of its two wastewater division service territories,

Penn Estates and UIP and adopts I&E's proposal to limit the increase of the availability fee to the system average increase. Id. at 10. The OCA stated that it did not oppose consolidation of the two rate areas and submitted that it is appropriate to cap the availability fee to the system average increase. Id.

Finally, the OCA recognized the Settlement provides that certain expenses and utility plant assets will not be included in the Company's rate base as originally proposed. Id. at 11. Specifically, the revenue requirement for the Company's water operations does not include in its rate base: (1) rate case expense; (2) tank inspection expense; (3) or the net book value of retired Penn Estates meters. Id. Similarly, the revenue requirement for the Company's wastewater operations does not include in its rate base: (1) rate case expense; (2) multi-year testing expense; (3) or fees related to the Delaware River Basin Committee permit. Id.

In its Statement in Support, I&E states the Settlement appropriately does not increase CUPA's customer charge for water rates and allocates the entire increase to the volumetric charge. See I&E Statement in Support at 8. Further, I&E states the agreed upon revenue allocations and rate design for CUPA wastewater customers are in the public interest as they represent a fair and reasonable rate increase. Id.

Under the Settlement rates, a typical Penn Estates residential water customer with a 5/8" meter using 4,000 gallons of water of per month will see an increase from \$42.29 to \$54.37 per month, or by \$12.08, or 28.6%. A typical Westgate residential water customer with a 5/8" meter using 4,000 gallons per month will see an increase from \$46.33 to \$54.37 per month, or by \$8.04, or 17.4%. A typical Penn Estates residential wastewater customer with a 5/8" meter will see an increase from \$46.56 to \$55.39 per month, or by \$8.83, or 19.0%. A typical Utilities Inc. of Pennsylvania residential wastewater customer with a 5/8" meter will see an increase from \$52.59 to \$55.39 per month, or by \$2.80, or 5.3%.

I agree with the Settling Parties that the Settlement provisions regarding the Company's rate design are reasonable and in the public interest. The consolidation of rates will

allow the Company to spread capital costs over a larger base of customers, ultimately benefitting and protecting all customers from rate increases and potential rate shock.

The Company's agreement to leave the flat rate customer charge for water unchanged, and instead, allocate the increase to the volumetric rates will provide more incentive for customers to conserve water, as well as, protect lower volume users from rates disproportionate to their impact on the system. It also addresses concerns raised by customers at the public input hearings. See Tr. 165-167.

Finally, the Settlement advances the issues raised by I&E and the OCA and excludes from the rate base the unamortized portion of the expense items claimed by the Company, as well as removes plant assets, which the Company has admitted are no longer 'used' and 'useful.' Accordingly, these provisions protect the public interest.

4. Purchased Water Adjustment Clause (PAWC)

In its Statement in Support, I&E discussed the Purchased Water Adjustment Clause (PWAC) that is addressed in paragraphs 26 and 30 of the Settlement. I&E stated that CUPA serves Westgate customers through water purchased from the City of Bethlehem, and the PWAC allows CUPA to pass increases and decreases in purchased water costs from the City of Bethlehem to Westgate customers. See I&E Statement in Support at 8. The Settlement also sets the baseline items used to determine the level of purchased water expense currently recovered through rates. See Settlement at ¶ 26. This allows the Company to determine if and when it should implement the PWAC to recover costs from Westgate customers that are in excess of present rates. However, I&E flagged this as an issue because the PWAC applies only to Westgate customers, not to Penn Estates customers, which they argued was not in keeping with consolidating rates across the two service territories. I&E testified that rate consolidation necessitates that the PWAC should apply to both Westgate and Penn Estates customers: "If Westgate customer rates include costs to treat water in Penn Estates, then it follows that Penn Estates customer rates should include costs to buy water from the City of Bethlehem to serve Westgate customers." See I&E Statement in Support at 9.

In its Statement in Support, the OCA echoed the same position as I&E. The OCA stated that in the current filing, the Company did not propose to apply the PWAC to Penn Estates customers, even though it sought consolidation of rates. See OCA Statement in Support at 14. The OCA specifically noted the customer testimony given at a public input hearing wherein the customer argued that given the Westgate service territory operates entirely off of purchased water from the City of Bethlehem, it is inappropriate to be burdened by the costs to maintain the water system in the Penn Estates service territory. Id.; see also Tr. at 154-55. Accordingly, the OCA concurs with I&E's reasoning that if full consolidation is to occur, the PWAC should also be consolidated and applied to both Westgate and Penn Estates customers. See OCA Statement in Support at 14.

I agree with the Settling Parties that the Settlement reaches a compromise by requiring the Company to initiate a Petition proceeding to address consolidation or elimination of the PWAC if the City of Bethlehem files a section 1308(d) rate increase. See Settlement at ¶ 29. The rates the City of Bethlehem charges CUPA are tariff rates and cannot be increased without Commission approval; therefore, until the City of Bethlehem makes its next rate filing and potentially increases its rates, CUPA will not implement the PWAC. This term provides that if the City of Bethlehem does file a rate increase, CUPA will initiate a Petition where the consolidation or elimination of the PWAC will be addressed. Id. However, if the City of Bethlehem does not increase rates prior to the next CUPA base rate proceeding, the parties reserve the right to address the issue in CUPA's next base rate proceeding. This is a routine, typical provision included in settlements regarding water utility rates that implement a PWAC. See e.g. Pa. Pub. Util. Comm'n v. Community Utilities of Pennsylvania Inc. – Water Division, Docket No. R-2016-2538660, Joint Petition for Full Settlement of Rate Proceeding at ¶ 14(h) (Sept. 13, 2016). Accordingly, this term is in the public interest because, either way, the application of the PWAC will be revisited prior to it being charged solely to Westgate customers.

5. Public Fire Protection Charge

In their Statements in Support, the OCA and I&E pointed out that in its initial filing, the Company proposed to remove the public fire protection charge for public fire hydrants

located in the Westgate service territory. See OCA Statement in Support at 12-13 and I&E Statement in Support at 9-10. The OCA stated that under its current tariff, Westgate charges public customers \$28.13 per hydrant per month. See OCA Statement in Support at 12. This amounts to approximately \$25,655 in revenue that would otherwise have to be collected from existing customers if the public fire protection charge was removed. Id. The OCA further explained that the Company reasoned it would be inappropriate to collect a public fire protection charge considering some of the hydrants cannot deliver 500 gallons per minute of flow at 20 pounds per square inch (psi) for two hours. Id. Thus, the Company was concerned about being liable for collecting costs for a service that it may not be able to provide. Id. In response, the OCA noted that out of the 76 hydrants within the Westgate service territory, only 15 of them could not meet the fire code flow requirements. Id. at 13. The OCA recommended that the Company continue to charge for those hydrants that can meet the fire code requirements. Id.

The Settlement adopts the OCA's position and provides that the Company will continue to impose the present fire hydrant charge for those fire hydrants that meet fire code requirements. See Settlement at ¶ 27. This is in the public interest because they are public fire hydrants capable of providing adequate fire protection service and should be charged the appropriate tariff rate. Additionally, the Settlement provides that the Company will provide a count of billed fire hydrants in each service area and a detailed breakdown of the cost for all fire hydrant maintenance and service in its next rate proceeding. Id. This is in the public interest because it will assist the Company and parties in determining the appropriate ratemaking treatment of hydrants in Penn Estates and Westgate going forward.

C. Recommendation

The effect that the increased rates proposed in the Settlement will have on the CUPA customers in both the Penn Estates and Westgate service territories must be balanced against the need of the same customers to have access to safe and reliable water and wastewater. The Company's right to an opportunity to earn a fair rate of return on the value of the property dedicated to public service must also be taken into consideration.

The Settlement represents an outcome that is preferable to the time, expense and uncertainty of litigation before the Commission and potentially, appellate courts, the reasonable costs of which may be borne by the ratepayers. Additionally, it is noted that the statutory advocates, I&E and the OCA, are part of the Joint Parties in full support of the Joint Settlement. When the statutory advocates fully support a settlement, it is strong evidence that the terms and conditions are just and reasonable and in the public interest. *See Pa. Pub. Util. Comm'n v. T.W. Phillips Gas and Oil Co.*, Docket No. R-2010-2167797 (Final Order entered November 4, 2010) (holding that the support of OTS, which is the predecessor of I&E, the OCA and OSBA was evidence that the settlement was reasonable and in the public interest).

Based on the totality of the record, I find that the rates as proposed under the Settlement for CUPA are just and reasonable. I also find that the Joint Parties sustained their burden to prove by substantial evidence that the Settlement is in the public interest. Accordingly, I recommend the Settlement be approved without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §§ 1301 and 1102.
2. In a rate case, the burden of proof to show that the proposed rates are just and reasonable is on the public utility. 66 Pa. C.S. § 315(a).
3. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas and Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975).
4. In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

5. The policy of the Commission is to promote settlements. 52 Pa.Code §§ 5.231(a) and 69.401.

6. The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases and have permitted their use since settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted).

7. Despite the Commission policy to promote settlements, the Commission’s determination to approve the proposed settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm’n. v. PECO Energy Co.*, Docket No. R-2018-3000164 at 15 (Order entered Dec. 20, 2018).

8. The Joint Petition for Full Settlement of Rate Proceeding submitted by the Company, the OCA and I&E is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That Community Utilities of Pennsylvania, Inc. shall not place into effect the rates, rules, and regulations contained in Supplement No. 5 to Tariff Water–Pa. P.U.C. No. 1 as filed on April 1, 2019, the same having been found to be unjust, unreasonable, and therefore, unlawful;

2. That Community Utilities of Pennsylvania, Inc. – Wastewater Division shall not place into effect the rates, rules, and regulations contained in Supplement No. 3 to

Tariff Wastewater–Pa. P.U.C. No. 1 as filed on April 1, 2019, the same having been found to be unjust, unreasonable, and therefore, unlawful;

3. That the rates, terms and conditions contained in the Joint Petition for Full Settlement of Rate Proceeding submitted by Community Utilities of Pennsylvania, Inc., the Office of Consumer Advocate, and the Bureau of Investigation and Enforcement, be approved and adopted consistent with the discussion contained herein;

4. That upon the Commission’s approval of this Joint Petition for Full Settlement of Rate Proceeding, Community Utilities of Pennsylvania, Inc. will be permitted to charge the rates for water service set forth in the proposed Supplement No. 8 to Tariff Water–Pa. P.U.C. No. 1, which is attached to the Joint Petition for Full Settlement of Rate Proceeding as Appendix A;

5. That Community Utilities of Pennsylvania, Inc. will file a tariff or tariff supplement in substantially the same form as that attached to the Joint Petition for Full Settlement of Rate Proceeding as Appendix A of the Rate Investigation at Docket No. R-2019-3008947 reflecting the rates, rules, and regulations to become effective upon at least one day’s notice, upon entry of the Commission Order approving the recommendation to adopt the Joint Petition for Full Settlement of the Rate Proceeding consistent with the discussion contained herein;

6. That upon acceptance of the appropriate compliance filing, the investigation at Docket No. R-2019-3008947 be marked closed;

7. That the formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2019-3009591 is deemed satisfied;

8. That the formal Complaint filed by Gary and Mary Kutzelman at Docket No. C-2019-3011086 is dismissed;

9. That the Secretary’s Bureau mark Docket Nos. C-2019-3009591 and C-2019-3011086 closed;

10. That upon the Commission's approval of this Joint Petition for Full Settlement of Rate Proceeding, Community Utilities of Pennsylvania, Inc. – Wastewater Division will be permitted to charge the rates for wastewater service set forth in the proposed Supplement No. 6 to Tariff Wastewater–Pa. P.U.C. No. 1, which is attached to the Joint Petition for Full Settlement of Rate Proceeding as Appendix A;

11. That Community Utilities of Pennsylvania, Inc. – Wastewater Division will file a tariff or tariff supplement in substantially the same form as that attached to the Joint Petition for Full Settlement of Rate Proceeding as Appendix A of the Rate Investigation at Docket No. R-2019-3008948 reflecting the rates, rules, and regulations to become effective upon at least one day's notice, upon entry of the Commission Order approving the recommendation to adopt the Joint Petition for Full Settlement of the Rate Proceeding consistent with the discussion contained herein;

12. That upon acceptance of the appropriate compliance filing, the investigation at Docket No. R-2019-3008948 be marked closed;

13. That the formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2019-3009592 is deemed satisfied;

14. That the formal Complaint filed by Gary and Mary Kutzelman at Docket No. C-2019-3011091 is dismissed; and

15. That the Secretary's Bureau mark Docket Nos. C-2019-3009592 and C-2019-3011091 closed.

Date: September 27, 2019

/s/
F. Joseph Brady
Administrative Law Judge