

**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	:	

RECOMMENDED DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision recommends that the Joint Petition for Settlement of Rate Investigation filed by all the parties in the above-captioned proceeding be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. In general, in lieu of the originally requested increase of \$646,727 per year in additional annual operating revenues, or an increase of 46.7%, the settlement provides the company an increase of \$500,000 per year, or an increase of 37.7% over present rates. The suspension period for this matter ends after the Commission’s Public Meeting scheduled for April 16, 2020.

HISTORY OF THE PROCEEDING

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 in 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 may be 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 may be 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 stated 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. In response to the prehearing conference order, prehearing memoranda were submitted by Lancaster, OCA, OSBA and I&E.

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. A scheduling order was issued on September 11, 2019 memorializing the procedural issues agreed to during the prehearing conference.

During the prehearing conference, the formal complaints filed by the OCA and OSBA were formally consolidated with the Commission's investigation and it was confirmed that there were 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, on April 17, 2020. A discussion was also held regarding public input hearings in the Lancaster service territory and it was

determined that no public input hearings would be scheduled at that time. The parties also agreed to a procedural schedule.

Pursuant to the procedural schedule the following pre-served testimony was submitted on October 17, 2019:

- the direct testimony and Exhibits of Brian Kalcic, OSBA St. 1;
- the direct testimony of Stacy L. Sherwood, OCA St. 1;
- the direct testimony of Aaron L. Rothschild, OCA St. 2;
- the direct testimony of Terry L. Fought, OCA St. 3;
- the direct testimony of Scott J. Rubin, OCA St. 4;
- the direct testimony of Christopher Keller, I&E St. 1;
- the direct testimony of Anthony Spadaccio, I&E St. 2; and
- the direct testimony of Holly Gilliland, I&E St. 3.

Also pursuant to the procedural schedule, on November 14, 2019, Lancaster filed:

- the rebuttal testimony of Christine Volkay-Hilditch, Lancaster St. CVH-R;
- the rebuttal testimony of Constance E. Heppenstall, Lancaster St. CEH-R;
- the rebuttal testimony of Harold Walker III, Lancaster St. HW-1R; and
- the rebuttal testimony of John J. Spanos, Lancaster St. JJS-R-1.

In addition, the OSBA also filed rebuttal testimony of Brian Kalcic, OSBA St. 1-R, on November 14, 2019. This testimony is in addition to the following pre-served testimony Lancaster submitted with its initial filing:

- the direct testimony of Christine Volkay-Hilditch, Lancaster St. 1;
- the supplemental testimony of Christine Volkay-Hilditch;
- the direct testimony of Patrick Hopkins, Lancaster St. PSH-1;
- the direct testimony of Constance E. Heppenstall, Lancaster St. CEH-1;
- the direct testimony of Harold Walker III, Lancaster St. HW-1; and
- the direct testimony of John J. Spanos, Lancaster St. JJS-1.

By email dated November 24, 2019, the parties indicated that they had made significant progress in settlement negotiations and requested an extension of time to file surrebuttal testimony to allow additional time for further negotiations. That request was approved via email on November 25, 2019.

By email dated December 3, 2019, the parties indicated that they had reached a settlement in principle of all issues and agreed that the hearings scheduled for December 4th and 5th could be cancelled. The parties further indicated that they would stipulate the admission into the record of all the pre-served testimony. The parties request to cancel the evidentiary hearings was granted and the hearings were cancelled via cancellation notice dated December 4, 2019.

On January 15, 2020, the parties submitted a joint petition for settlement of rate investigation. Attached to the settlement were the following appendices: Appendix A – proposed findings of fact, conclusions of law and ordering paragraphs; Appendix B – proof of revenues; and Appendix C – parties’ statements in support. The parties also submitted a joint stipulation for admission of evidence formally seeking to move into the record of this proceeding all of the pre-served testimony. That stipulation will be granted as part of the ordering paragraphs below and the parties will be directed to ensure that the appropriate number of copies of the pre-served testimony being admitted into the record will be provided to the Commission’s Secretary’s Bureau for inclusion into the official record of this proceeding pursuant to Commission regulations.

The record closed on January 15, 2020, the date the settlement and accompanying attachments were submitted. The suspension period for this matter ends on April 17, 2020. For the reasons discussed further below, this decision recommends that the settlement filed on January 15, 2020 be approved in its entirety without modification because it is in the public interest and supported by substantial evidence.

DISCUSSION

Legal Standard

Under Section 1301 of the Public Utility Code, a public utility's rates must be just and reasonable. 66 Pa. C.S. § 1301. The Commission possesses a great deal of flexibility in its ratemaking function. See Popowsky v. Pa. PUC, 665 A.2d 808, 812 (Pa. 1995). "In determining just and reasonable rates, the [Commission] has discretion to determine the proper balance between the interests of ratepayers and utilities." Id. The term "just and reasonable" is not intended to confine the ambit of regulatory discretion to an absolute or mathematical formula; rather, the Commission is granted the power to balance the prices charged to utility customers and returns on capital to utility investors. Pa. PUC v. Pa. Gas & Water Co., 424 A.2d 1213, 1219 (Pa. 1980), *cert. denied*, 454 U.S. 824 (1981).

In this proceeding, the parties have submitted a unanimous settlement of all the issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id.; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm'n v. MXenergy Electric Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

Furthermore, all 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. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

It is against this legal backdrop that the settlement will be considered.

Settlement

In the settlement, the parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the settlement are as follows with the paragraph numbers listed as they appear in the original settlement filed with the Commission:

5. The City will be permitted to establish rates for outside-City customers which will produce an overall increase in annual operating revenues of approximately \$500,000 in lieu of its originally proposed increase of \$646,727. These rates, as determined in accordance with the attached Proof of Revenues and Tariff Supplement, will be effective prior to April 17, 2020, upon Commission approval. The Proof of Revenues attached hereto at Appendix B, reflects rates that are designed to recover approximately \$500,000 of additional revenues from outside-City customers. In sum, for outside-City customers, the increase in revenues by class from present rates as proposed in this Petition for Settlement are as follows:

CITY OF LANCASTER - OUTSIDE CUSTOMERS

<u>Outside City Customers</u>	<u>Revenue Present Rates</u>	<u>Revenue Settlement Rates</u>	<u>Increase</u>
Residential	\$ 602,078	\$ 812,227	\$ 210,149
Commercial	666,135	932,873	266,738
Industrial	43,547	60,984	17,437
Total Outside City	\$ 1,311,760	\$ 1,806,085	\$ 494,325
Outside City Other Revenues	\$ 77,459	\$ 83,050	\$ 5,591
Total Outside City Revenue	\$ 1,389,219	\$ 1,889,135	\$ 499,916

6. In addition to, and in consideration of, the agreed-upon overall increase in operating revenues for outside customers of approximately \$500,000, Joint Petitioners also agree to various terms and conditions set forth as follows:

a. **Reporting on Plant Additions**—The City agrees to provide to the Joint Petitioners with an update to the response to I&E-RB-13 which was attached to I&E Ex. No. 3 as Sch. 8 and labelled by Lancaster as 2019 Balance Rollforward for the years 2019-2020 no later than six months after Settlement rates go into effect, and an additional update will be provided for the years 2020-2021 no later than January 4, 2021, each to be filed under this docket number. The updated tables will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2019, and December 31, 2020, respectively.

b. **OCA-OPEB Issue**—All issues related to Other Post-Employment Benefits (OPEBs) are resolved as follows:

(1) The City shall make monthly deposits into its OPEB Irrevocable Trust equal to 1/12th of PUC-jurisdictional customers' share of the Annual Required Contribution ("ARC").

(2) The PUC-jurisdictional customers' share of the ARC shall be determined by an Actuarial Study that separately identifies an ARC for PUC-jurisdictional customers, separate and apart from the obligations of the inside-City customers. This provision alters the methodology for calculating the OPEB ARC developed in past rate proceedings to ensure that jurisdictional customers do not bear an increased obligation as a result of the City's decision to not fund the non-jurisdictional portion of the ARC.

(3) The City shall maintain an accurate account of all monthly OPEB deposits.

c. **Stay-Out**—The City agrees that it will not file for another wastewater base rate case before December 31, 2021.

d. **Rate Effective Date**—Joint Petitioners agree that it is in the public interest for Settlement Rates to go into effect after one day's notice upon the entry of a Commission Order approving this Settlement, prior to the end of the suspension period.

e. **Rate Structure/Rate Design**—Joint Petitioners agree to the distribution of revenue among customer classes in this Petition for Settlement as set forth in the attached Proof of Revenues at Appendix B. These charges specifically provide for \$17.62 per quarter, or \$5.87 per month, minimum charge for 5/8-inch customers and volumetric charges of 5.872 per 1,000 gallons for the first 25,000 gallons per month, \$4.075 for the next 308,000 gallons per month and \$3.198 per 1,000 gallons for usage over 333,000 gallons per month. The design and structure of rates for outside customers of the City under this Petition for Settlement are developed based upon the customer and volumetric charges contained within the Rate Schedules set forth in Appendix B. Joint Petitioners agree that rates and charges set forth in Appendix B are just and reasonable and are in the public interest.

f. **Rate Design**—Joint Petitioners agree to use the City's current rate structure with monthly and quarterly customer minimum charges and volumetric rates. The settlement rates are scaled back to reach sufficiently close to the agreed upon overall revenue increase of \$500,000. The Joint Petitioners agree to design the settlement rates based on the following percentage increases by class: the Residential class has a revenue increase of 34.9% or \$210,148, the Commercial class has a revenue increase of 40.0% or \$266,738, and the Industrial class has a revenue increase of 40.0% or \$17,437.

Settlement at 3-5. In addition, the parties also agreed that Lancaster's original filing, including direct and rebuttal testimony, exhibits and supporting data, as well as all pre-served testimony, exhibits and supporting data filed by OCA, I&E and OSBA shall be admitted into the record via stipulation and with cross-examination waived. Id. at 6.

The settlement is also conditioned on the normal terms and conditions contained in most settlements submitted to the Commission. For example, the parties agreed that the settlement is being proposed to resolve the instant case and is made without any admission against, or prejudice to, any positions which any party might adopt during any subsequent litigation of this proceeding or in any other proceeding. Id. If the Commission withholds or alters such approval as to any terms and conditions, any party may withdraw from the settlement and resume litigation of this proceeding. Id. at 6-7. The parties also agreed to waive the filing of exceptions if the settlement is recommended for adoption in this Recommended Decision. Id. at 7.

Public Interest

Position of the parties

In the settlement, the parties agreed that adoption and approval of the settlement is in the public interest. Settlement at 6. The parties asserted that the settlement provides for a sound and reasonable revenue requirement and appropriately balances the interests and concerns of all parties. Id. The settlement also noted that approval of the settlement will avoid the need for continued litigation of this proceeding. Id.

In its statement in support of the settlement, the OSBA averred that the settlement is in the public interest of Lancaster's small business customers because of the agreed upon revenue allocation. The OSBA discussed the treatment of this issue in Lancaster's original filing as well as the updated cost of service study Lancaster provided in response to discovery in this matter. The OSBA also discussed the various positions of its witness Brian Kalcic regarding revenue allocation and concluded that the revenue allocation proposed in the settlement is consistent with Mr. Kalcic's testimony and represents a fair and reasonable resolution of this issue. The OSBA therefore supports the settlement and requested that it be approved in its entirety.

In its statement in support of the settlement, I&E averred that the settlement is in the public interest and represents a fair, just, reasonable and equitable balance of the company and its customers. I&E noted that the settlement meets all the legal and regulatory standards necessary for approval and that ratepayers benefit when rate case expenses stay at a reasonable level.

More specifically, I&E stated that the settlement will allow Lancaster to file new tariff rates designed to produce an overall distribution base rate increase of \$500,000 instead of the originally requested \$646,727. I&E noted that the agreed upon rate is within the range of likely outcomes in the event the case was fully litigated and appropriate when considered with the other provisions contained in the settlement. I&E also noted the provision in the settlement where Lancaster agreed to provide the OCA, OSBA and I&E updates to the fully projected future test year reporting which includes actual capital expenditures, plant additions and retirements so that actual expenses and rate base additions can be compared to Lancaster's projections. I&E also noted the stay-out provision whereby Lancaster would not file another request to increase base rates before December 31, 2021 as another reason why the settlement is in the public interest because a stay-out provides customers rate stability for a certain period of time. Next, I&E noted the rate structure and rate design provisions in the settlement as being in the public interest because Lancaster should only recover those direct monthly costs that vary with the addition or loss of a customer and because the rate design allows customers to have greater control of their bill.

In its statement in support of the settlement, the OCA also noted the reduced revenue requirement as its initial reason why the settlement is in the public interest and should be approved in its entirety. The OCA noted that it initially recommended that Lancaster receive an increase no higher than \$350,283, which is \$296,444 less than the original amount requested whereas the agreed upon amount of \$500,000 was \$146,727 less than the original amount requested. The OCA also noted that the agreed upon amount is within the range of likely outcomes in the event of full litigation of the filing.

The OCA further noted the provisions in the settlement regarding rate design and cost allocation, noting that the settlement maintains the same rate design but scales back each block rate to account for the reduced revenue under the settlement. The OCA discussed the other post-employment benefit (OPEB) obligations, noting that the settlement provides that Lancaster will work its actuary to determine a separate annual retired contribution (ARC) for outside-city customers beginning January 2020 to ensure that jurisdictional customers do not overpay their share of OPEB obligations as a result of Lancaster's decision not to fund the non-jurisdictional customers' portion of the OPEB ARC. Similar to I&E, the OCA also recognized the requirement in the settlement where Lancaster agrees to provide updates to the parties regarding plant additions, noting that the reporting will provide additional information that may be helpful in the next base rate case, as well as the stay-out until December 31, 2021 as provisions in the public interest that support approving the settlement without modification.

Finally, in its statement in support, Lancaster stated that the settlement is in the public interest and should be adopted in its entirety without modification by restating the terms and conditions of the settlement.

Disposition

Having reviewed the various filings, including the pre-served testimony, the settlement and the statements in support of settlement, it is clear that the settlement is in the public interest, supported by substantial evidence and should be adopted in its entirety without modification. *See, Lancaster, Warner, supra.*

As an initial matter, I agree with the parties that the agreed upon overall increase in annual operating revenues of \$500,000 in lieu of the originally proposed increase of \$646,727 is in the public interest. This amount is likely within the range of outcomes in the event the case was fully litigated. The parties reached this amount through settlement instead of incurring additional costs of additional litigation. As the OCA noted, its original revenue requirement was approximately \$350,000. Therefore, the \$500,000 agreed upon by the parties is mid-way between the company's request of \$646,727 and the OCA's position of \$350,000. The agreed

upon revenue increase will allow Lancaster to receive sufficient operating funds to ensure the safe and adequate provision of service while maintaining just and reasonable rates. The originally proposed increase of 46.7% is reduced to 37.7%. Although an increase of 37.7% is still significant, it is less than a 46.7% increase and will save customers of Lancaster approximately \$146,000 per year.

Furthermore, the settlement is in the public interest because of the agreement that Lancaster will provide the OCA, OSBA and I&E with updates to discovery regarding the actual capital expenditures, plant additions and retirements for the 12 months ending December 31, 2019 and December 31, 2020. This provision of the settlement is in the public interest because it will allow the parties and the Commission to measure and verify the accuracy of Lancaster's projected investments in future facilities. The parties will be able to compare the actual expenses and rate base additions to gauge how accurate Lancaster's projections were in this case. This reporting requirement is consistent with Section 315 of the Public Utility Code which requires utilities using the fully projected future test year when setting rates to provide appropriate data evidencing the accuracy of the estimates contained in the future test year. 66 Pa.C.S. § 315(e).

I agree that the settlement is also in the public interest and should be approved without modification because of the provisions regarding other post-employment benefits (OPEBs) where Lancaster agreed to make monthly deposits into its OPEB irrevocable trust equal to 12-months of the Commission-jurisdictional customers' share of the Annual Required Contribution (ARC) that is determined by an actuarial study that determines the ARC for Commission-jurisdictional and non-Commission-jurisdictional customers. This will ensure that the appropriate amount is being collected from the Commission-jurisdictional and non-Commission-jurisdictional customers and is therefore in the public interest. This provision will also ensure that the fund is properly funded and that the jurisdictional customers do not overpay.

The rate structure and rate design provisions of the settlement are also in the public interest and warrants approving the settlement without modification. The parties have agreed to a minimum charge for 5/8-inch customers and a volumetric charge, as well as a rate design where the residential customer class will see a revenue increase of 34.9%, the commercial

class sees a revenue increase of 40% and the industrial class sees a revenue increase of 40%. The settlement will allow customers more control of their bills and promote conservation by shifting costs to the volumetric portion of the customer's bill more so than Lancaster's declining block structure that is composed entirely of a volumetric charge which does not allow Lancaster to recover fixed costs through a fixed customer charge. The rate design proposed in the settlement is in the public interest.

Finally, the settlement is in the public interest because it includes a stay-out provision whereby Lancaster has agreed that it will not file for another wastewater base rate case before December 31, 2021. This provision is in the public interest because it will help provide rate stability by giving Lancaster's customers a period of time where their rates will not change.

In addition, as is the case with all settlements, the settlement should be approved as being in the public interest because the settlement will save the Commission and the parties from expending substantial time and expense involved with further litigation. Although the parties exchanged substantial discovery and submitted several rounds of pre-served testimony, additional costs would have included hearings, briefs, exceptions and possible appeals. Minimizing such expenditures reduces the costs that Lancaster, and others, might ultimately pass on to the ratepayers, and also conserves the resources of the Commission and all other parties involved in this proceeding as well.

The settlement should be approved as being in the public interest because the parties have exchanged voluminous pre-served testimony and have engaged in extensive discovery and other litigation-related efforts in order to properly investigate and resolve the issues presented, much of which was admitted into the record via stipulation. These efforts demonstrate that the initial filings of the company and the responses to the filings have been thoroughly vetted and considered by all concerned parties. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point of the proceeding. As a result, the settlement is in the public interest and should be approved without modification.

Finally, it is noted that the parties have reached what is referred to as a “black box” settlement where the settlement provides for an increase in the utility’s revenues but does not indicate the specifics of how the parties calculated the increase. The Commission has permitted “black box” settlements as a means of promoting settlements in contentious base rate proceedings. Pa. Pub. Util. Comm’n v. Wellsboro Electric Co., Docket No. R-2010-2172662 (Order entered January 13, 2011); Pa. Pub. Util. Comm’n v. Citizens’ Electric Co. of Lewisburg, Docket No. R-2010-2172665 (Order entered January 13, 2011). The Commission has observed that determining a utility’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting expenses, depreciation, rate base, taxes and the utility’s cost of capital. Reaching an agreement among the parties on each component can be difficult and impractical. As a result of this complexity, the Commission supports the use of “black box” settlements. Pa. Pub. Util. Comm’n v. Peoples TWP LLC, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013). The submission of a black box settlement in this case is reasonable.

Conclusion

In this case, the parties have proposed a unanimous settlement of all issues regarding Lancaster’s request to increase base rates. This decision recommends that the settlement be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. The parties are commended for their efforts to pursue settlement of the issues in this case. As noted above, the Commission strongly encourages settlement.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 1301, 1308(d).
2. Under Section 1301 of the Public Utility Code, a public utility’s rates must be just and reasonable. 66 Pa.C.S. § 1301.

3. The Commission possesses a great deal of flexibility in its ratemaking function. See Popowsky v. Pa. PUC, 665 A.2d 808, 812 (Pa. 1995).

4. In determining just and reasonable rates, the Commission has discretion to determine the proper balance between the interests of ratepayers and utilities. Popowsky v. Pa. PUC, 665 A.2d 808, 812 (Pa. 1995).

5. The term “just and reasonable” is not intended to confine the ambit of regulatory discretion to an absolute or mathematical formula; rather, the Commission is granted the power to balance the prices charged to utility customers and returns on capital to utility investors. Pa. PUC v. Pa. Gas & Water Co., 424 A.2d 1213, 1219 (Pa. 1980), *cert. denied*, 454 U.S. 824 (1981).

6. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources.

7. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.

8. The Commission encourages black box settlements. Pa. PUC v. Aqua Pa., Inc., Docket No. R-2011-2267958, at 26-27 (Order entered June 7, 2012); Pa. PUC v. Peoples TWP LLC, Docket No. R-2013-2355886, at 27 (Order entered Dec. 19, 2013); Statement of Chairman Robert F. Powelson, Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Public Meeting, August 2, 2012).

9. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. Pa. PUC v. UGI Utilities, Inc. – Gas Division, Docket No. R-2015-2518438 (Order entered Oct. 14, 2016); Pa. PUC v. Philadelphia Gas Works, Docket No. M-00031768 (Order entered Jan. 7, 2004).

10. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

11. “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. Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

12. The rates and terms of service set forth in the settlement are supported by substantial evidence and are in the public interest.

13. Consistent with the terms and conditions set forth in the settlement, Lancaster’s proposed rate increase should be granted.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the City of Lancaster – Wastewater shall not place into effect the rates contained in its Supplement No. 39 to Tariff Wastewater – Pa.P.U.C. No. 7 which was filed on July 19, 2019 at docket number R-2019-3010955.

2. That the Joint Petition for Settlement of Rate Investigation filed at docket number R-2019-3010955 on January 15, 2020 is approved in its entirety and without modification.

3. That the joint stipulation for admission of evidence that was submitted on January 15, 2020 formally seeking to move into the record of this proceeding all of the pre-served testimony is hereby approved and the parties are directed to ensure that two copies of all pre-served testimony identified in the joint stipulation are submitted to the Commission's Secretary's Bureau for inclusion in the Commission's official file.

4. That the City of Lancaster – Wastewater shall be permitted to file tariff supplements incorporating the terms of the settlement and changes to its rates, rules and regulations as set forth in the attachments to the Joint Petition for Settlement of Rate Investigation filed on January 15, 2020 at docket number R-2019-3010955 to become effective on at least one day's notice after entry of the Commission's order approving the settlement, which tariff supplements increase the City of Lancaster – Wastewater rates so as to produce an increase in annual revenue of not more than \$500,000.

5. That after the City of Lancaster – Wastewater files the required tariff supplement set forth in Paragraph 4 of this Order, the investigation concerning the City of Lancaster – Wastewater at docket number R-2019-3010955 shall be terminated and marked closed.

6. That the complaint filed by the Office of Consumer Advocate against the City of Lancaster – Wastewater at docket number C-2019-3011834 shall be deemed satisfied and marked closed.

7. That the complaint filed by the Office of Small Business Advocate against the City of Lancaster – Wastewater at docket number C-2019-3012096 shall be deemed satisfied and marked closed.

Date: February 5, 2020

_____/s/_____
Joel H. Cheskis
Deputy Chief Administrative Law Judge