

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2009-2106908
Brian and Patricia Woodward	:	C-2009-2135995
	:	
v.	:	
	:	
Borough of Hanover	:	

**ORDER PERMITTING WITHDRAWAL OF COMPLAINT,
CANCELLING PREHEARING CONFERENCE,
AND TRANSFERRING RATE FILING TO THE
BUREAU OF FIXED UTILITY SERVICES**

I. BACKGROUND

On August 28, 2009, the Borough of Hanover (“Borough” or “Respondent”) filed Supplement No. 19 to Tariff Water - Pa. P. U. C. No. 3 (Supplement No. 19), with the Pennsylvania Public Utility Commission (Commission) to become effective October 27, 2009, containing proposed changes in rates, rules, and regulations calculated to produce \$308,586 (10.24%) in additional annual revenues for customers located outside the Borough, based on a test year ended December 31, 2008. The Commission had previously granted the Borough a filing extension until August 31, 2009, in a Secretarial Letter dated May 14, 2009. Pursuant to 66 Pa. C.S. §1308(d), the filing was suspended by operation of law until May 27, 2010, unless permitted by Commission Order to become effective at an earlier date.

On October 1, 2009, a Formal Complaint was filed against Supplement No. 19 by Brian and Patricia Woodward (the Woodwards or Complainants) and docketed at C-2009-2135995. Due to the filing of this Formal Complaint, the Commission, by Order entered October 22, 2009, instituted an investigation concerning Supplement No. 19, and assigned the matter to the Office of Administrative Law Judge (OALJ) for hearings and a Recommended Decision. I

was assigned as the presiding officer, and a Prehearing Conference was scheduled for November 5, 2009, in Harrisburg, PA, for the purpose of establishing a procedural schedule.

On October 28, 2009, I was advised that the Woodwards did not wish to pursue their Formal Complaint. I indicated that to allow for the cancellation of the Prehearing Conference and avoid unnecessary litigation costs, I would need a signed letter of withdrawal of the Formal Complaint from the Woodwards and a signed letter from the Office of Trial Staff (OTS) that the requested increase should be permitted to go into effect without a hearing or further Commission investigation. I had previously been informed that the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) had elected not to file a complaint or intervene in this proceeding (see attached e-mail confirming OCA and OSBA non-participation).

On October 29, 2009, I received a signed letter of withdrawal from the Complainants, a copy of which has been attached hereto and incorporated herein. The original was filed with the Commission's Secretary's Bureau on November 2, 2009.

On October 30, 2009, I received a signed letter from OTS indicating that, as the only Formal Complaint had now been withdrawn, OTS continued to recommend that the full increase go into effect in this proceeding. It further explained that, based upon its analysis, the Borough's proposed changes in rates, rules and regulations do not appear to be unlawful, unjust, unreasonable or contrary to the public interest and do not appear to produce an excessive rate of return. Accordingly, OTS recommended that the rates, rules and regulations contained in Supplement No. 19 be permitted to become effective in their entirety without further investigation or hearings. A copy of the OTS letter is attached hereto and incorporated herein. The original letter was filed with the Secretary's Bureau on November 3, 2009.

After having received the requested documents indicating that there was no further controversy requiring hearings, OALJ sought the concurrence of the Director of the Commission's Bureau of Fixed Utility Services (FUS) concerning a proposed procedure for

processing the filing. Under the proposed OALJ course of action, and to avoid unnecessary litigation costs, the Formal Complaint would be permitted to be withdrawn, the Prehearing Conference would be cancelled as there is no controversy to be investigated through hearings, and the rate filing would be transferred to FUS for administrative processing. On November 3, 2009, OALJ received the concurrence of the Director of FUS that the OALJ proposed course of action was acceptable to FUS.

II. DISCUSSION

The Commission's procedural regulations at 52 Pa. Code §5.94 provide for the withdrawal of pleadings in a contested proceeding, upon approval of the presiding officer assigned to hear the matter. No party has objected to the withdrawal of the Woodward Complaint and as I find withdrawal to be in the public interest, it will be approved in the following Ordering Paragraphs.

Since the Formal Complaint has been withdrawn, there is no longer any controversy to be decided in a hearing, and the Prehearing Conference will be cancelled in the following Ordering Paragraphs.

Finally, as the Director of FUS has approved a process whereby this matter would be transferred back to FUS for administrative processing, thereby saving litigation costs which would ultimately be borne by ratepayers, the case will be transferred to FUS in the following Ordering Paragraphs.

III. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Brian and Patricia Woodward at Docket No. C-2009-2135995 against the proposed rate increase of the Borough of Hanover at Docket No. R-2009-2106908 is hereby withdrawn at the request of the Complainants.

2. That the Prehearing Conference scheduled for Thursday, November 5, 2009, in this matter is cancelled due to the withdrawal of the only Formal Complaint.

3. That this rate filing be transferred to the Commission's Bureau of Fixed Utility Services for administrative processing.

Dated: November 4, 2009

Kandace F. Melillo
Kandace F. Melillo
Administrative Law Judge

**R-2009-2106908, et al. PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al. v.
BOROUGH OF HANOVER**

(Revised 10/23/2009)

JAN P PADEN ESQUIRE
SCOTT H DeBROFF ESQUIRE
ALICIA R PETERSEN ESQUIRE
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE 12 FL
PO BOX 1146
HARRISBURG PA 17108-1146
(717) 231-6634

WILLIAM R LLOYD JR
SMALL BUSINESS ADVOCATE
OFFICE OF SMALL BUSINESS ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101
(717) 783-2525

JOHNNIE E SIMMS CHIEF PROSECUTOR
PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF TRIAL STAFF
400 NORTH STREET
PO BOX 3265
HARRISBURG PA 17105-3265
(717) 787-1976

BRIAN & PATRICIA WOODWARD
1012 HOSTETTER ROAD
HANOVER PA 17331
(717) 646-1401
C-2009-2135995

Melillo, Kandace

From: Hoover, Christine Maloni [CHoover@paoca.org]
Sent: Wednesday, October 28, 2009 4:38 PM
To: Lloyd, William (DCED); Melillo, Kandace; DeBroff, Scott; Paden, Jan; Simms, Johnnie; Wright, Carrie
Subject: RE: R-2009-2106908 Borough of Hanover rate case

Judge Melillo,

OCA also elected not to file a complaint or become a party to this case.

Chris Hoover

From: Lloyd, William (DCED) [mailto:willlloyd@state.pa.us]
Sent: Wednesday, October 28, 2009 3:18 PM
To: Melillo, Kandace; DeBroff, Scott; Paden, Jan; Simms, Johnnie; Wright, Carrie B.
Cc: Hoover, Christine Maloni
Subject: RE: R-2009-2106908 Borough of Hanover rate case

ALJ Melilo,

Your understanding is correct with regard to the OSBA. This office has elected not to file a complaint or otherwise intervene.

Bill Lloyd

From: Melillo, Kandace
Sent: Wednesday, October 28, 2009 3:16 PM
To: SCOTT H. DEBROFF; jpaden@rhoads-sinon.com; Simms, Johnnie; Wright, Carrie
Cc: Hoover, Christine Maloni; Lloyd, William (DCED)
Subject: R-2009-2106908 Borough of Hanover rate case

I was informed today by the assigned mediator that the only formal complainants in this case (the Woodwards) intend to withdraw their complaint (C-2009-2135995). I have not been contacted by the Complainants to date with respect to the process for doing this. In order to allow for cancellation of the prehearing conference, I would need a withdrawal of the Complaint in writing, signed by the Complainants, and a written statement from the OTS that the requested increase should be permitted to go into effect without a hearing or further Commission investigation. It is my understanding that OCA and OSBA have elected not to intervene/file a complaint in this matter.



November 2, 2009

Re: Borough of Hanover/Docket Nos. R-2009-2106908 and C-2009-2135995

James J. McNulty, Secretary
Public Utility Commission
P O Box 3265
Harrisburg PA 17105-3265

Via Hand Delivery

Dear Secretary McNulty:

Delivered herewith please find the original and three (3) copies of the "withdrawal" letter of the sole formal complainants. We ask that this withdrawal be docketed to the dockets noted in the heading above.

Copies of the enclosed letter are being hand-delivered to the presiding Administrative Law Judge, Kandace F. Melillo, and to the OTS Prosecutor, Carrie B. Wright, Esq.

Very truly yours,

RHOADS & SINON LLP

By:

Jan P. Paden

Enclosures

cc: Administrative Law Judge Kandace F. Melillo (with encl.)
Carrie B. Wright, Esquire (with encl.)

JPP/jhe

RECEIVED
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Re: Brian and Patricia Woodward v. Borough of Hanover

Judge Kandace F. Melillo
Public Utility Commission
P O Box 3265
Harrisburg PA 17104-3265

Dear Judge Melillo:

I have previously advised Mr. Paden, one of the attorneys for the Borough of Hanover, that we do not intend to pursue our complaint docketed to C-2009-2135995. I understand from a subsequent message left for me that you need a signed writing indicating our intent.

This will confirm that we wish to withdraw our complaint filed with the Commission as stated above, and by this letter do so.

Sincerely,



Brian and Patricia Woodward
1012 Hostetter Road
Hanover PA 17331
(717) 646-1401

Dated: 10/29, 2009



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 30, 2009

Honorable Kandace F. Melillo
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Borough of Hanover
Docket No. R-2009-2106908

Dear Judge Melillo:

On June August 28, 2009, the Borough of Hanover ("Borough") filed Supplement No. 19 to Tariff Water - PA P.U.C. No. 3 with the Commission to become effective October 27, 2009. This would increase the Company's base rate revenues by \$308,586 or 10.24%. As a result of the formal complaint filed by Brian and Patricia Woodward at Docket No. C-2009-2135995, the filing was suspended by operation of law on October 27, 2009, until May 27, 2010. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. The complainants have chosen to withdraw their complaint.

The Office of Trial Staff ("OTS") became involved in this proceeding as the only Public Advocate required to do so by statute. The Office of Consumer Advocate and the Office of the Small Business Advocate have not been involved in this proceeding. OTS in its report to the Commission had recommended that the full increase be permitted to go into effect on October 27, 2009.

As the complaint has been withdrawn, please be advised that the Office of Trial Staff continues to recommend that the full increase go into effect in this proceeding. Based upon the analysis of OTS, the proposed changes in rates, rules and regulations do not appear to be unlawful, unjust, unreasonable or contrary to the public interest and do not appear to produce an excessive rate of return. The Borough claims an overall rate of return for outside borough customers of 0.90%. The resulting rate of return on equity of -3.4% is reasonable.

PA PUC

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RECEIVED
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Therefore, the Office of Trial Staff recommends that the rates, rules and regulations contained in Supplement No. 19 to Tariff Water - Pa. P.U.C. No. 3 be permitted to become effective in their entirety without further investigation or hearings.

Copies of this correspondence are being served on all active parties of record.

Sincerely,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Prosecutor
Office of Trial Staff
PA Attorney I.D. #208185

CBW/nhd

cc: Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :
et al. :
 : Docket No. R-2009-2106908
v. :
 :
Borough of Hanover

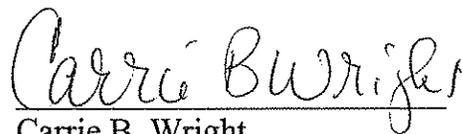
CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Correspondence** dated October 30, 2009, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Jan P. Paden, Esquire
Scott H. DeBroff, Esquire
Alicia R. Petersen, Esquire
Rhoads & Sinon LLP
One South Market Square
P.O. Box 1146
Harrisburg, PA 17108-1146



Carrie B. Wright
Prosecutor
Office of Trial Staff
PA Attorney I.D. #208185

Dated: October 30, 2009
Docket No. R-2009-2106908