

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 16, 2020

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

Re: Tim S. McKercher
Tracy L. Albrecht
Leonard and Sabrina Bosse
Dwight and Judy Dubs
Keith C. Keller and Susan A. Belt
v.
Hanover Municipal Water Works
Docket Nos. C-2020-3021080
C-2020-3022354
C-2020-3022724
C-2020-3022725
C-2020-3022804

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply to the New Matter Raised by Hanover Municipal Water Works to the Initial and Amended Formal Complaints of Tim S. McKercher and Tracy L. Albrecht in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Enclosures:

cc: The Honorable Mary Long (email only)
Certificate of Service

*299578

CERTIFICATE OF SERVICE

Re: Tim S. McKercher	:	Docket Nos. C-2020-3021080
Tracy L. Albrecht	:	C-2020-3022354
Leonard and Sabrina Bosse	:	C-2020-3022724
Dwight and Judy Dubs	:	C-2020-3022725
Keith C. Keller and Susan A. Belt	:	C-2020-3022804
v.	:	
Hanover Municipal Water Works	:	

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Reply to the New Matter Raised by Hanover Municipal Water Works to the Initial and Amended Formal Complaints of Tim S. McKercher and Tracy L. Albrecht, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of November 2020.

SERVICE BY E-MAIL ONLY

Scott T. Wyland, Esquire
 Isaac P. Wakefield, Esquire
 Salzmann Hughes, PC
 112 Market Street, 8th Floor
 Harrisburg, PA 17101

Tim S. McKercher
 375 Park Heights Blvd
 Hanover, PA 17331

Tracey L. Albrecht
 390 Park Heights Blvd
 Hanover, PA 17331

Dwight and Judy Dubs
 415 Beck Mill Road
 Hanover, PA 17331

Leonard and Sabrina Bosse
 421 Beck Mill Road
 Hanover, PA 17331

Keith C. Keller and Susan A. Belt
 410 Park Heights Blvd
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 Dated: November 16, 2020
 *299494

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tim S. McKercher	:	Docket Nos.	C-2020-3021080
Tracy L. Albrecht	:		C-2020-3022354
Leonard and Sabrina Bosse	:		C-2020-3022724
Dwight and Judy Dubs	:		C-2020-3022725
Keith C. Keller and Susan A. Belt	:		C-2020-3022804
	:		
v.	:		
	:		
Hanover Municipal Water Works	:		

OFFICE OF CONSUMER ADVOCATE'S REPLY
TO THE NEW MATTER RAISED BY
HANOVER MUNICIPAL WATER WORKS TO THE
INITIAL AND AMENDED FORMAL COMPLAINTS OF
TIM S. MCKERCHER AND TRACY L. ALBRECHT

Pursuant to Section 5.63(a) of the Pennsylvania Public Utility Commission's (PUC or Commission) Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.63(a), the Office of Consumer Advocate (OCA) makes the following reply to the New Matter raised in the Borough of Hanover, Hanover Municipal Water Works' (Hanover) Answers to the initial and amended Complaint of Tim S. McKercher and the Complaint of Tracy L. Albrecht. These Complaints were consolidated by Interim Order issued on October 13, 2020. Based on the OCA's review, the New Matter raised in each of Hanover's Answers are identical.¹ As such, the OCA will provide one Reply. The first paragraph reference is to Mr. McKercher's Complaint. The second paragraph reference is to Mr. Albrecht's Complaint.

¹ McKercher Amended Formal Complaint, ¶¶ 13-32; McKercher Formal Complaint, ¶¶ 13-32; Albrecht Formal Complaint, ¶¶ 7-26.

1. Paragraph 13/7 is denied. Whether Hanover has violated any section of the Code, Commission regulation or order, or its tariff raises allegations and issues of fact which must be specifically proven. The Complainants have questioned whether requiring customers to pay for installing a new service line to retain water service, because Hanover is abandoning an existing main, is just and reasonable under applicable law. 66 Pa. C.S. § 1501.

2. Paragraph 14/8 is admitted, in part; denied in part. Paragraph 14/8 accurately quotes a portion of Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. Whether Hanover's rules and application of its rules are reasonable and in compliance with Section 1501 is a question of law and fact, which must be specifically proven. Specifically, the Complainants have the burden to establish a *prima facie* case under 66 Pa. C.S. § 332(a) and, if established, Hanover will have the burden of rebuttal.² Burleson v. Pa. PUC, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983); Milkie v. Pa. PUC, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

3. Paragraph 15/9 contains legal conclusions and argument for which no response is required.

4. Paragraph 16/10 is admitted, in part; denied, in part. Hanover has accurately quoted from the referenced case. The relevance of the quoted material to this proceeding is legal argument, for which no response is required.

5. Paragraph 17/11 is admitted, in part; denied in part. Hanover has an obligation to furnish and to maintain "adequate, efficient, safe, and reasonable services and facilities" under Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. Whether Hanover has met its obligation under Section 1501 is a question of law and fact, has been challenged and must be specifically proven.

² This is the standard to which the OCA refers throughout this Reply, in stating that matters must be specifically proven.

6. Paragraph 18/12 is denied. The OCA is without sufficient knowledge to admit or deny the averments contained therein.

7. Paragraph 19/13 is denied. Whether Hanover's tariff applies where the customer has already installed and maintained a service line and is required to install a new service line to retain water service because the utility has determined to abandon the existing main to which those customers are connected, is at issue in this proceeding and must be specifically proven.

8. Paragraph 20/14 is denied. Whether Hanover's tariff applies where the customer has already installed and maintained a service line and is required to install a new service line to retain water service because the utility has determined to abandon the existing main to which those customers are connected, is at issue in this proceeding and must be specifically proven.

9. Paragraph 21/15 is denied for the same reasons stated immediately above, in response to Paragraph 20/14.

10. Paragraph 22/16 is denied for the same reasons stated above, in response to Paragraph 20/14.

11. Paragraph 23/17 is denied. The OCA is without sufficient knowledge to admit or deny the averments contained therein.

12. Paragraph 24/18 is denied because it raises allegations and issues of fact which have been challenged and must be specifically proven.

13. Paragraph 25/19 is denied because it raises allegations and issues of fact which have been challenged and must be specifically proven.

14. Paragraph 26/20 contains legal conclusions and argument for which no response is required.

15. Paragraph 27/21 is a legal conclusion for which no response is required.

16. Denied. The OCA is without sufficient knowledge to admit or deny the allegations contained in the remainder of Paragraph 28/22. Moreover, the allegations raise issues of fact which must be specifically proven.

17. Paragraph 29/23 is denied. Whether Hanover's tariff applies where the customer has already installed and maintained a service line and is required to install a new service line to retain water service because the utility has determined to abandon the existing main to which those customers are connected, is at issue in this proceeding and must be specifically proven.

18. Paragraph 30/24 is denied. Whether Hanover is acting within the bounds of the Public Utility Code, Commission regulations or orders, or its tariff raises allegations and issue of fact which must be specifically proven. The Complainants have questioned whether requiring customers to pay for installing a new service line to retain water service, because Hanover is abandoning an existing main, is just and reasonable under applicable law. 66 Pa. C.S. § 1501.

19. Paragraph 31/25 is admitted, in part; denied in part. The Complainants have standing to bring Complaints on their own behalf. 52 Pa. Code §§ 1.21(a), 5.21(a). Mr. McKercher filed an amended Formal Complaint to make clear that he represents only himself. See McKercher Amended Complaint. Both Mr. McKercher and Mr. Albrecht's Complaints expressly state that they personally, do not want to pay for a new service line as a result of Hanover's decision to abandon an existing main.³ The OCA has standing to represent the interests of Hanover consumers and intervened in this consolidated proceeding for the purpose of ensuring that the customers who

³ Since those Complaints were filed, three additional Complaints have been filed against Hanover by customers who raise the same objection: Leonard and Sabrina Bosse, Docket No. C-2020-3022724; Dwight and Judy Dubs, Docket No. C-2020-3033725; and Keith C. Keller and Susan A. Belt, Docket No. C-2020-3022804. These Complaints were consolidated with the McKercher and Albrecht Complaints by Interim Orders issued on November 10, 2020 and November 12, 2020.

have been directed to install and pay for new service lines receive adequate and continuous service, provided in a just and reasonable manner. 71 P.S. §§ 309-2, 309-4.

20. Paragraph 32/26 is admitted, in part; denied in part. Mr. McKercher and Mr. Albrecht have not joined all residents affected by this Project.⁴ The failure to join other Hanover customers, however, is not grounds to dismiss their Complaints, which address Mr. McKercher's and Mr. Albrecht's individual objections to paying for new service lines. Further, as noted above, the OCA has intervened in this proceeding for the purpose of ensuring that the customers who have been directed to install and pay for new service lines receive adequate and continuous service, provided in a just and reasonable manner.

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate respectfully requests that the Commission deny Hanover's request for dismissal of the Complaints.

Respectfully Submitted,

/s/ Christy M. Appleby

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DATE: November 16, 2020

⁴ See footnote 3, *supra*.