

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 14, 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 the Borough of Hanover, Hanover Municipal Water Works to the Formal Complaints of Leonard and Sabrina Bosse, Dwight and Judy Dubs, and Keith C. Keller and Susan A. Belt in the above-referenced proceeding.

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

*300778

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 the Borough of Hanover, Hanover Municipal Water Works to the Formal Complaints of Leonard and Sabrina Bosse, Dwight and Judy Dubs, and Keith C. Keller and Susan A. Belt, 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 14th day of December 2020.

SERVICE BY E-MAIL ONLY

Scott T. Wyland, Esquire
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 Dated: December 14, 2020
 *300780

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
FORMAL COMPLAINTS OF
LEONARD AND SABRINA BOSSE,
DWIGHT AND JUDY DUBS, AND
KEITH C. KELLER AND SUSAN A. BELT

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 Formal Complaints of Leonard and Sabrina Bosse, Keith C. Keller and Susan A. Belt, and Dwight and Judy Dubs. These Complaints were consolidated by Interim Order issued on October 13, together with the Formal Complaints of Tim S. McKercher at Docket No. C-2020.-3021080 and Tracy L. Albrecht at Docket No. C-2020-3022354.¹ Based upon the OCA's review, the New Matters raised in these

¹ These Complaints were consolidated together with the Formal Complaints of Tim S. McKercher at Docket No. C-2020-3021080 and Tracy L. Albrecht at Docket No. C-2020-3022354. McKercher, et al. v. Hanover Municipal Water Works, Docket Nos. C-2020-3021080 *et al.*, Interim Order Consolidating Complaints (Nov. 4, 2020) (consolidating Bosse and Dubs Formal Complaints); McKercher, et al. v. Hanover Municipal Water Works, Docket Nos. C-2020-

Answers are identical, but for the last two paragraphs (Paragraphs 21 and 22) added to Hanover's New Matter for the Bosse Formal Complaint. As such, the OCA will provide one Reply.² The first paragraph reference is to the Bosse Formal Complaint. The second paragraph reference is to Keller/Belt Formal Complaint. The third paragraph reference is to the Dubs Formal Complaint.

1. Paragraph 1/11/13 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 2/12/14 is admitted, in part; denied in part. Paragraph 2 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.³ 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 3/13/15 contains legal conclusions and argument for which no response is required.

4. Paragraph 4/14/16 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.

3021080 *et al.*, Interim Order Consolidating Complaint of Keith C. Keller and Susan A. Belt and Referring to Mediation (Nov. 12, 2020).

² Bosse Formal Complaint, ¶¶ 1-22; Keller/Belt Formal Complaint, ¶¶ 11-30; Dubs Formal Complaint, ¶¶ 13-32.

³ This is the standard to which the OCA refers throughout this Reply, in stating that matters must be specifically proven.

5. Paragraph 5/15/17 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.

6. Paragraph 6/16/18 is denied. The OCA is without sufficient knowledge to admit or deny the averments contained therein.

7. Paragraph 7/17/19 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 8/18/20 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 9/19/21 is denied for the same reasons stated immediately above, in response to Paragraph 8.

10. Paragraph 10/20/22 is denied for the same reasons stated above, in response to Paragraph 8.

11. Paragraph 11/21/23 is denied. The OCA is without sufficient knowledge to admit or deny the averments contained therein.

12. Paragraph 12/22/24 is denied because it raises allegations and issues of fact which have been challenged and must be specifically proven.

13. Paragraph 13/23/25 is denied because it raises allegations and issues of fact which have been challenged and must be specifically proven.

14. Paragraph 14/24/26 contains legal conclusions and argument for which no response is required.

15. Paragraph 15/25/27 is a legal conclusion for which no response is required.

16. Paragraph 16/26/28 is denied. The OCA is without sufficient knowledge to admit or deny the allegations contained in the remainder of Paragraph 16. Moreover, the allegations raise issues of fact which must be specifically proven.

17. Paragraph 17/27/29 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 18/28/30 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 19/29/31 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). The Bosse, Dubs, and Keller/Belt 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. 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 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 20/30/32 is admitted, in part; denied in part. The Bosses, Dubs, and Mr. Keller/Ms. Belt have not joined all residents affected by this Project. The failure to join other Hanover customers, however, is not grounds to dismiss their Complaints, which address the Complainants' respective 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.

21. Paragraph 21 of the New Matter filed by Hanover regarding the Formal Complaint of Leonard and Sabrina Bosse is denied. The Complainants have filled-out and filed the Formal Complaint form provided by the Commission for such purpose. The paragraphs in the Formal Complaint form are numbered paragraphs 1-10. Hanover also argues that the Complainants failed to attach the May 5, 2020 letter referenced in their Formal Complaint in violation of 52 Pa. Code § 1.31. Section 1.31 provides that copies of documents relied upon should be attached to pleadings. While the Bosse Formal Complaint did not attach the May 5, 2020 letter referenced, the letter is not needed to understand the allegations identified in the Bosse Complaint. Moreover, the May 5, 2020 letter was sent by *Hanover* to the Complainants, so Hanover already possesses the information and cannot, therefore, claim to be harmed by the Complainants' failure to include the information in their Formal Complaint. Section 1.2 generally provides for the liberal construction of rules of practice and procedure before the Commission, to ensure the "just, speedy and inexpensive determination of every action or proceeding" as may be applicable. 52 Pa. Code § 1.2. The ALJ and Commission also have the discretion to "disregard an error or defect of procedure which does not affect the substantive rights of the parties." 52 Pa. Code § 1.2(a). See

e.g., Pa. PUC v. Dauphin Consol. Water Supply Co., 1993 WL 597782 (Pa. PUC, July 9, 1993); Lancaster Yellow Cab & Baggage, Inc. v. Pa. L.R.B., 88 A.2d 866 (Pa. 1952). The Dubs Complaint contains the elements necessary to place Hanover on notice of the allegations and the relief sought.

22. Paragraph 22 of the New Matter filed by Hanover regarding the Bosse Complaint is a legal conclusion for which no response is required.

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: December 14, 2020