



COMMONWEALTH OF PENNSYLVANIA

December 30, 2020

E-FILED

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

**Re: Pennsylvania Public Utility Commission v. The City of Bethlehem – Water
Department Supplement No. 15 Tariff Water- Pa P.U.C. No. 6 / Docket No. R-2020-
3020256**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3020256
	:	
The City of Bethlehem – Water	:	
Department Supplement No. 15 Tariff	:	
Water- Pa P.U.C. No. 6	:	

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney I.D. No. 77538**

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
(717) 783-2525**

I. Introduction

A. History of the Proceeding

On July 31, 2020, the City of Bethlehem – Water Department (the “City” or the “Company”) filed Supplement No. 15 to Tariff Water Pa. P.U.C. No. 6 (“Supplement No. 15”), with the Pennsylvania Public Utility Commission (“Commission”). The rates set forth in Supplement No. 15, if approved by the Commission, would increase the City’s annual jurisdictional revenues by \$908,421.

On August 27, 2020, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint in opposition to Supplement No. 15.

On October 8, 2020, a prehearing conference was held before Administrative Law Judge (“ALJ”) Steven K. Haas.

On October 8, 2020, ALJ Haas issued his Prehearing Order.

On November 6, 2020, the OSBA served the Direct Testimony of Brian Kalcic.

On November 24, 2020, the OSBA served the Rebuttal Testimony of Mr. Kalcic.

On December 9, 2020, the OSBA served the Surrebuttal Testimony of Mr. Kalcic.

On December 17, 2020, the ALJ Haas conducted an evidentiary hearing.

The OSBA submits this Main Brief in accordance with ALJ Haas’s October 8th Prehearing Order.

B. Legal Standards

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

The burden of proof to establish the justness and reasonableness of every element of the utility's rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). "It is well-established that the evidence adduced by a utility to meet this burden must be substantial." *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). "Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case." *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to "consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates." In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate and reasonable service. "[I]n exchange for the utility's provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility's investors . . . In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs." *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S.

§ 1501. As a result, the legislature has given the Commission discretionary authority to deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa. C.S. § 526(a).

II. Summary of Argument

This rate case takes places during the COVID-19 Pandemic. All the Company’s ratepayers have been affected, and frequently devastated, by the Pandemic.

In light of the Pandemic and its affect on the Company’s ratepayers, the ALJ and the Commission should award no revenue increase to the City at this time. However, in the event that the ALJ and Commission award an increase to the City, the OSBA respectfully requests that the ALJ and Commission adopt the OSBA’s revenue allocation and scale back proposal.

III. Overall Position on the Proposed Rate Increase

The OSBA is cognizant of the fact that the Office of Administrative Law and the Commission are aware and fully informed of the impact that the COVID-19 Pandemic is having upon the Commonwealth and utility ratepayers.

In assessing the condition of the Commonwealth’s small commercial and industrial (“Small C&I”) customers, the OSBA refers to the Census Bureau’s Small Business Pulse Survey for Pennsylvania. The latest data is updated through December 20, 2020, and now available.

The updated data¹ for “expectations” in Pennsylvania show the following:

- Small Businesses returning to normal operation in 2-3 months – 3.4%
- Small Business returning to normal operation in 4-6 months – 19.7%
- Small Businesses returning to normal operation in more than 6 months – 46.5%
- Small Business that will never return to normal operation – 5.5%

¹ <https://portal.census.gov/pulse/data/>

- Small Businesses that have permanently closed – 2.2%

The December 20th data demonstrates that small businesses in the Commonwealth have been overwhelmed by the COVID-19 Pandemic.

In addition, the Johns Hopkins Coronavirus Resource Center² documents that, at the time of this writing, the highest number of new COVID-19 cases in Pennsylvania was 13,295 on December 11th – a mere 19 days ago.

Naturally, the OSBA is advocating on behalf of the City's Small Commercial and Industrial ("C&I") ratepayers. The OSBA is certain that the Office of Consumer Advocate ("OCA") will make an equally compelling argument on behalf of the City's residential customers. Ultimately, there is one simple, over-arching decision that the ALJ and the Commission must reach before proceeding any further with their deliberations: should this case be treated as a "traditional ratemaking" case, or does the COVID-19 Pandemic trump "traditional ratemaking"?

The City's position on this issue is clear based upon the *Joint Petition for Approval of Partial Settlement of Rate Investigation* filed by the Company and the Bureau of Investigation and Enforcement on December 28, 2020. Simply put, the City views this as a "traditional ratemaking" case with a traditional solution – a settlement where the City would receive 76% of its original revenue increase request.

I&E's position on "traditional ratemaking" is equally clear, but for an entirely different reason. I&E explained its marching orders in its Exceptions to the Recommended Decision in the current Columbia Gas base rates case:

However, until directed otherwise by the Commission, I&E has continued to employ its traditional ratemaking analysis in rate cases.

² <https://coronavirus.jhu.edu/region/us/pennsylvania>

I&E Exceptions, Docket No. R-2020-3018835, at 6.

For the OSBA, our concern with increasing customer rates at this time is essentially two-fold: how many Commonwealth small businesses will be critically (and/or permanently) affected by the COVID-19 Pandemic; and how long will this Pandemic last? This second concern is particularly difficult to address because, at the time of this writing, no one (including Dr. Fauci himself) knows.

Consequently, the OSBA respectfully submits that the City should be awarded no revenue increase at this time. The Pandemic has been too devastating for ratepayers, and its duration is too unknown, to assign the Company's ratepayers any rate increases at this time.

Once the Pandemic has subsided, it would be just and reasonable to address the City's revenue increases at that time.

IV. Issues resolved among the parties

The OSBA is not addressing this issue in this Main Brief.

V. Rate Base

The OSBA is not addressing this issue in this Main Brief.

VI. Revenues

The OSBA is not addressing this issue in this Main Brief.

VII. Expenses

The OSBA is not addressing this issue in this Main Brief.

VIII. Rate of Return

The OSBA is not addressing this issue in this Main Brief.

IX. Taxes

The OSBA is not addressing this issue in this Main Brief.

X. Rate Structure / Rate Design

OSBA witness Brian Kalcic summarized the City's rate schedules, as follows:

At present, the City serves approximately 13,800 residential, commercial, industrial, public, sale for resale and fire protection customers that reside outside the City limits.

* * *

All general or metered service customers pay a fixed customer charge (that varies by meter size) and a flat rate consumption charge. However, the City maintains only three separate general service consumption charges, i.e., a unique consumption charge applies to: 1) residential customers; 2) commercial, industrial and public customers; and 3) resale customers.

OSBA Statement No. 1, at 2-3. Significantly, Mr. Kalcic observed that "the City charges the same rates for service to inside- and outside-City customers." *Id.*, at 3. This rate structure severely limits the flexibility to set customer rates in this proceeding.

The City did discover an error in its originally filed cost of service study ("COSS"). *Id.*, at 4. Mr. Kalcic summarized the outside-city rates using the corrected COSS in his Schedule BK-2.³ Mr. Kalcic observed, as follows:

Schedule 2 [BK-2] shows that outside-City customers provide an overall rate of return (line 7) that is lower than the overall rate of return provided by inside-City customers (line 8), at both present and proposed rates.

OSBA Statement No. 1, at 5.

However, because of the City's rate structure, moving outside-City rate classes to their cost of service is essentially impossible. Mr. Kalcic explained the problem:

As a practical matter, in order to equalize the rates of return, the City would need to establish separate rate schedules for water service to inside- and outside-City customers. Doing so would allow the City to adjust total inside- and outside-City revenues so

³ Schedule BK-2 is attached in the Appendix to this Brief.

as to achieve its claimed overall rate of return of 8.24% from *each* rate area.

As it stands, since the rates of return provided by inside- and outside-City customers cannot be equalized, the City's requested rate of return from outside-City customers must be less than the City's requested rate of return from inside-City customers (i.e., the outside-City rate of return must be the *lower* of the two), otherwise the rate of return provided by outside-City customers would exceed the City's total requested rate of return of 8.24%.

OSBA Statement No. 1, at 5 (emphasis in original) (footnote omitted).

As an initial matter, Mr. Kalcic explained the importance of revenue subsidies, as follows:

By definition, if a class is not paying exactly its full cost of service, it is either: a) receiving a subsidy (i.e., paying too little); or b) providing a subsidy (i.e., paying too much). In order to determine whether or not a class is moving toward cost of service, one must ascertain whether the class's present subsidy is growing or shrinking at proposed rates. If its present subsidy is growing at proposed rates, the class is moving in the wrong direction (i.e., away from cost of service). Conversely, if its present subsidy is shrinking at proposed rates, the class is moving closer to cost of service.

In short, the proper yardstick for measuring the degree of movement toward cost of service is the change in the absolute level of class subsidies at present and proposed rates.

OSBA Statement No. 1, at 6-7 (emphasis added).

Therefore, to determine a just and reasonable revenue allocation (at the City's requested revenue increase), Mr. Kalcic calculated the level of the outside-City class revenue subsidies associated with the City's current and proposed class revenue levels, based on the corrected outside-City rates of return shown on line 7 of Schedule BK-2. Mr. Kalcic summarized his results in Schedule BK-3.⁴

⁴ Schedule BK-3 is attached in the Appendix of this Brief.

Mr. Kalcic explained the results set forth in Schedule BK-3, as follows:

Page 1 of Schedule BK-3 indicates that all outside-City customer classes except for Other Water Utilities are moving closer to cost of service under the City's proposed revenue allocation, although the rate of movement toward cost of service is not uniform among such classes.

OSBA Statement No. 1, at 7. Once again, due to the City's limited rate structure, it is not possible to move the non-Resale classes towards cost of service in a more uniform fashion. *Id.*

Ultimately, Mr. Kalcic set forth his recommended revenue allocation among the City's various customer classes. Mr. Kalcic moved the City's Resale customer class closer to the City's (corrected) cost of service than originally proposed by the Company. Mr. Kalcic set forth his proposed revenue allocation in Schedule BK-4.⁵ Mr. Kalcic explained his proposed revenue allocation, as follows:

My recommended revenue allocation was derived via two steps. First, I assigned a cost-based increase of 16.7% to the Resale class, as given by the City's corrected COSS. This step provides for an additional \$123,612 increase to the Resale class, compared to the City's proposal, which is available as rate relief to other classes.

Second, I assigned the \$123,612 of rate relief from Step 1 to the inside- and outside-City residential classes, in proportion to their respective levels of consumption, so as to facilitate implementing the OSBA's recommended outside-City residential increase.

OSBA Statement No. 1, at 8 (footnote 3 omitted). Mr. Kalcic's footnote 4 states:

Since the City serves all residential customers on the same rate schedule, a reduction in the City's proposed residential customer charge of approximately 6.08¢ would hit the residential revenue target shown in Schedule BK-4.

Id., at 9, footnote 4.

⁵ Schedule BK-4 is attached in the Appendix of this Brief.

All of Mr. Kalcic's revenue allocation analysis used the City's requested revenue increase. If the Commission were to award a revenue increase greater than zero, but less than the amount requested by the City, Mr. Kalcic recommended:

In that event, I would recommend that the target class increases shown in column 2 of Schedule BK-4 be scaled back proportionately.

OSBA Statement No. 1, at 9.

XI. Miscellaneous issues

The OSBA is not addressing this issue in this Main Brief.

XII. Conclusion

Therefore, the OSBA respectfully requests that the ALJ and Commission deny the City's requested revenue increase.

In the alternative, if the ALJ and the Commission grant the City a revenue increase greater than zero, the OSBA respectfully requests that the ALJ and Commission adopt the OSBA's revenue allocation and scale back proposals.

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: December 30, 2020

APPENDIX

BK SCHEDULES

BK-2, BK-3, BK-4

CITY OF BETHLEHEM - BUREAU OF WATER

Class Cost-of-Service Results
 Per Corrected City Cost Study
 Detail on Outside-City Classes Only
(Test Period Ending December 31, 2020)

<u>Line</u>	<u>Classification</u>	<u>Present Rate of Return</u>	<u>Proposed Rate of Return</u>
		1	2
1	Residential	5.11%	7.47%
2	Commercial / Public	4.82%	7.30%
3	Industrial	2.45%	4.80%
4	Other Water Utilities	4.78%	5.00%
5	Private Fire Protection	12.31%	12.31%
6	Public Fire Protection	7.37%	7.37%
7	Total Outside City	5.43%	7.27%
8	Total Inside City	6.56%	8.86%
9	Total Operations	6.12%	8.24%

Source: Corrected COSS, Schs. B & C.

CITY OF BETHLEHEM - BUREAU OF WATER

Class Revenue Subsidies at
Present and City Proposed Rates
Outside-City Only
(Test Period Ending December 31, 2020)

<u>Line</u>	<u>Classification</u>	<u>Present Subsidy</u>	<u>Proposed Subsidy</u>
		1	2
1	Residential	(\$75,778)	\$47,417
2	Commercial / Public	(\$67,747)	\$4,474
3	Industrial	(\$90,241)	(\$74,411)
4	Oth. Water Utilities	(\$35,459)	(\$123,612)
5	Private Fire	\$199,387	\$146,132
6	Public Fire	<u>\$69,838</u>	<u>\$0</u>
7	Total Outside City	\$0	\$0

Source: Schedule BK-3, page 2 of 2.

Note: A positive figure indicates that a class is providing a subsidy;
a negative figure indicates that it is receiving a subsidy.

CITY OF BETHLEHEM - BUREAU OF WATER

Calculation of Class Revenue Subsidies
at Present and City Proposed Rates
(Test Period Ending December 31, 2020)

<u>Line Classification</u>	<u>Present Rate Revenue</u> (1)	<u>Cost of Service at Present Rates</u> (2)	<u>Subsidies at Present Rates</u> (3) = (1) - (2)	<u>Proposed Rate Revenue</u> (4)	<u>Cost of Service at Proposed Rates</u> (5)	<u>Subsidies at Proposed Rates</u> (6) = (4) - (5)
1 Residential	\$4,346,130	\$4,421,908	(\$75,778)	\$4,896,794	\$4,849,377	\$47,417
2 Commercial / Public	\$1,780,724	\$1,848,471	(\$67,747)	\$2,056,540	\$2,052,066	\$4,474
3 Industrial	\$392,261	\$482,502	(\$90,241)	\$463,577	\$537,988	(\$74,411)
4 Oth. Water Utilities	\$802,841	\$838,300	(\$35,459)	\$813,465	\$937,077	(\$123,612)
5 Private Fire	\$593,471	\$394,084	\$199,387	\$593,471	\$447,339	\$146,132
6 Public Fire	<u>\$329,358</u>	<u>\$259,520</u>	<u>\$69,838</u>	<u>\$329,358</u>	<u>\$329,358</u>	<u>\$0</u>
Total Outside City	\$8,244,785	\$8,244,785	\$0	\$9,153,205	\$9,153,205	\$0

Source: Exhibit CEH-1, Schedule A Corrected COSS, Schedule B

Exhibit CEH-1, Schedule A Corrected COSS, Schedule A

CITY OF BETHLEHEM - BUREAU OF WATER

OSBA Recommended Allocation of the City's
 Requested Increase in Total Base Revenue
 Detail on Outside-City Classes Only
(Test Period Ending December 31, 2020)

Line	Classification	Present	Recommended Increase	
		Base Revenue	Amount	Percent
		1	2	3
1	Residential	\$4,346,130	\$508,731	11.7%
2	Commercial	\$1,342,428	\$205,036	15.3%
3	Industrial	\$392,261	\$71,316	18.2%
4	Public	\$438,296	\$70,780	16.1%
5	Oth. Water Utilities	\$802,841	\$134,236	16.7%
6	Private Fire	\$593,471	\$0	0.0%
7	Public Fire	<u>\$329,358</u>	<u>\$0</u>	0.0%
8	Subtotal	\$8,244,785	\$990,099	12.0%
9	Other Revenues	<u>\$89,748</u>	<u>\$0</u>	0.0%
10	Total Outside City	\$8,334,533	\$990,099	11.9%
	<u>Inside City</u>			
11	Sales Revenue	\$13,363,434	\$1,701,014	12.7%
12	Other Revenue	<u>\$138,493</u>	<u>\$0</u>	0.0%
13	Total Inside City	\$13,501,927	\$1,701,014	12.6%
14	Total Operations	\$21,836,460	\$2,691,113	12.3%

Source: Rate Study, Schedule 2.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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v.	:	Docket No. R-2020-3020256
	:	
The City of Bethlehem – Water	:	
Department Supplement No. 15 Tariff	:	
Water- Pa P.U.C. No. 6	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Steven K. Haas
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
sthaas@pa.gov

Christine Maloni Hoover, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
choover@paoca.org
(*Counsel for OCA*)

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815
scott.j.rubin@gmail.com

John M. Coogan, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
jcoogan@pa.gov
(*Counsel for BIE*)

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

DATE: December 30, 2020

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538