



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

January 12, 2021

**Via Electronic Filing**

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 to Tariff Water – Pa. P.U.C. No. 6  
Docket No.: R-2020-3020256  
**I&E Reply Comments**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) **Reply Comments** for the above-captioned proceeding.

Copies are being served on the parties of record as evidenced in the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Coogan", with a long horizontal flourish extending to the right.

John M. Coogan  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 313920  
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JMC/ac  
Enclosures

cc: Honorable Steven K. Haas, Office of Administrative Law Judge (*via e-mail only*)  
Per Certificate of Service



## I. REPLY COMMENTS

I&E represents the public interest and therefore considers the interests of ratepayers, utilities, and the regulated community as a whole. After thorough investigation, I&E asserts the Partial Settlement balances these interests.<sup>2</sup> Because the Partial Settlement balances these interests, it is in the public interest and should be approved, and the OCA's Comments opposing the Partial Settlement should be rejected.<sup>3</sup>

### REVENUE REQUIREMENT

Although I&E's analysis recommended numerous reductions to the City's revenue claim, ultimately, I&E's position is that it is appropriate for the City to receive a rate increase. Therefore, I&E avers the settlement amount of \$689,932 for revenue requirement is reasonable for several reasons. First, it benefits ratepayers by lowering the proposed rate increase by \$218,489. Second, it satisfies the City's claim for additional revenue to provide safe and reliable service. Third, it is unrealistic to expect any party to win all their positions through litigation. Therefore, a settlement amount approximately halfway between revenue requirement positions is a reasonable compromise.<sup>4</sup> Specifically, the revenue requirement settlement amount of \$689,932 is approximately the midpoint between I&E's position of \$474,161 and the City's proposal of \$908,421.<sup>5</sup>

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<sup>2</sup> I&E's investigation is reflected through extensive discovery and testimony, as detailed in the Joint Petition and I&E's Statement in Support.

<sup>3</sup> The Commission has recognized that "[t]he prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest." *Pa. P.U.C. v. Philadelphia Electric Company*, 60 Pa. P.U.C. 1 (Pa. P.U.C. 1985). Additionally, the Partial Settlement promotes the public interest because it reflects a compromise of I&E's and the City's positions. *See Pa. P.U.C. v. C S Water and Sewer Associates*, 74 Pa. P.U.C. 767 (Pa. P.U.C. 1991) (The Commission stated that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.").

<sup>4</sup> As noted in I&E's Statement in Support, this is a "black box" settlement, meaning there is no agreement upon individual issues regarding revenue requirement. I&E Statement in Support, p. 6.

<sup>5</sup>  $\$908,421 + \$474,161 = \$691,291$ .

I&E notes this settlement amount is also approximately the midpoint of OCA's "business as usual" position of \$446,173 and the City's proposal of \$908,421.<sup>6</sup>

The U.S. Supreme Court has definitively stated what level of revenue a utility should be expected to earn. In *Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia*,<sup>7</sup> the U.S. Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.<sup>8</sup>

The U.S. Supreme Court affirmed these principles in *Federal Power Commission v. Hope Natural Gas Co.*,<sup>9</sup> stating:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to equity owner should be commensurate with returns

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<sup>6</sup> \$908,421 + \$446,173 = \$677,297.

<sup>7</sup> 262 U.S. 679 (1923) ("*Bluefield*").

<sup>8</sup> *Bluefield* at 692-93.

<sup>9</sup> 320 U.S. 591 (1944) ("*Hope Natural Gas*").

on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.<sup>10</sup>

I&E was mindful of both *Bluefield* and *Hope* in making its recommendations in this proceeding. Specifically, I&E witness Anthony Spadaccio calculated an appropriate rate of return for the City, including a recommended return on equity using the Discounted Cash Flow (“DCF”) methodology frequently used by the Commission.<sup>11</sup> Consistent with *Bluefield* and *Hope*, a DCF analysis provides the City with an opportunity to earn a return on investment similar to a proxy group of enterprises with corresponding risks and uncertainties. Although the settlement revenue requirement does not entirely reflect I&E’s analysis, as explained above, it is a reasonable compromise between positions. Additionally, this is a black box settlement, and there is no agreement upon individual issues regarding revenue requirement.

The OCA opposes the Partial Settlement because “the level of the rate increase and lack of other provisions that have been raised in this proceeding are fatal flaws that render the Partial Settlement not in the public interest”.<sup>12</sup> Regarding revenue requirement, OCA avers the City’s existing rates are adequate because they produce an overall rate of return of 5.65%.<sup>13</sup> However, I&E’s DCF analysis, as explained above, demonstrates a rate of return of 6.75% is reasonable. OCA’s own “business as usual” analysis reflects a

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<sup>10</sup> *Hope Natural Gas* at 603.

<sup>11</sup> I&E St. No. 1; I&E Ex. No. 1.

<sup>12</sup> OCA Reply Brief, p. 9.

<sup>13</sup> OCA Reply Brief, pp. 9-10.

rate of return of 6.57%.<sup>14</sup> OCA also avers increasing base rates by \$689,932 “is not supported by the evidence of record in this case.”<sup>15</sup> I&E disputes this statement. As documented in the Joint Petition, I&E, as well as the City, provided extensive testimony in this proceeding that would support approval of the Partial Settlement.

OCA also generally opposes the Partial Settlement’s rate increase because of the ongoing COVID pandemic.<sup>16</sup> To support its position, OCA cites to a recent Recommended Decision by ALJ Katrina L. Dunderdale that denied a rate increase for reasons related to COVID.<sup>17</sup> However, to the contrary, ALJ Conrad A. Johnson recently approved a Partial Settlement that included a rate increase, notwithstanding similar arguments from OCA regarding COVID.<sup>18</sup> More importantly, despite the OCA’s rationale and varied decisions by ALJs, the Commission has continued to approve rate increases. The COVID pandemic has been ongoing in Pennsylvania for nearly a year and I&E is unaware of the Commission denying a rate increase because of COVID. To the contrary, the Commission recently rejected an ALJ recommendation to delay a rate increase for Philadelphia Gas Works because of the effects of COVID.<sup>19</sup>

As explained above, the Partial Settlement does not reflect a specific resolution of revenue requirement or rate of return as this is a black box settlement. Nonetheless, I&E avers the OCA’s Comments regarding the Partial Settlement and revenue requirement

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<sup>14</sup> See OCA Reply Brief, p. 10.

<sup>15</sup> OCA Reply Brief, p. 12.

<sup>16</sup> OCA Reply Brief, p. 11.

<sup>17</sup> OCA Reply Brief, pp. 11-12. I&E notes the Commission has yet to act on the Recommended Decision cited by OCA.

<sup>18</sup> *Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket Nos. R-2020-3019369 and R-2020-3019371, Recommended Decision (December 22, 2020).

<sup>19</sup> *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered November 19, 2020), pp. 64-71.

should be rejected and the Partial Settlement should be approved because it represents a reasonable compromise of positions reflected in the record.

### **REVENUE ALLOCATION AND RATE DESIGN**

The OCA states that it is not opposed to the OSBA’s scaleback proposal that is reflected in OSBA’s testimony and in the Partial Settlement.<sup>20</sup> Therefore, because there is no opposition, the Partial Settlement term related to revenue allocation and rate design should be approved by the ALJ and the Commission without modification.

### **OTHER TARIFF CHANGES – ELIMINATION OF LOWER SAUCON HONOR SYSTEM RATE**

The OCA states that it does not oppose the provision of the Partial Settlement regarding elimination of the Lower Saucon Honor System rate.<sup>21</sup> Therefore, because there is no opposition, this term should be approved by the ALJ and the Commission without modification.

### **UNACCOUNTED FOR WATER (“UFW”)**

The OCA states that the Partial Settlement provision related to UFW is consistent with the OCA’s testimony.<sup>22</sup> Therefore, because there is no opposition, this term should be approved by the ALJ and the Commission without modification.

### **CUSTOMER CLASS DEMAND STUDY**

The OCA states that it has taken no position regarding the Customer Class Demand Study term. Because there is no opposition to the Partial Settlement term

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<sup>20</sup> OCA Reply Brief, p. 14.

<sup>21</sup> OCA Reply Brief, pp. 14-15.

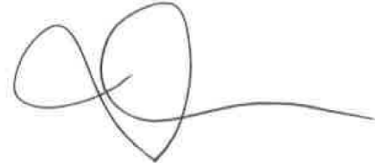
<sup>22</sup> OCA Reply Brief, p. 15.

regarding the Customer Class Demand Study, this term should be approved by the ALJ and the Commission without modification.<sup>23</sup>

## II. CONCLUSION

I&E's extensive analysis in this proceeding demonstrates a rate increase for the City is warranted. Although the settlement rate increase is higher than I&E's position, it is a reasonable balance of positions. Therefore, for the reasons stated herein and in the Joint Petition and I&E's Statement in Support of the Joint Petition, approval of the Partial Settlement is in the public interest and I&E respectfully requests that ALJ Haas recommend, and the Commission approve, the terms and conditions contained in the Partial Settlement.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right.

John M. Coogan, Esq.  
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Dated: January 12, 2021

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<sup>23</sup> OCA Reply Brief, p. 15.

**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 to Tariff Water –	:	
Pa. P.U.C. No. 6	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Comments** dated January 12, 2021, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

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