

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3020919
Dennis Zajac	:	C-2020-3021410
Office of Consumer Advocate	:	C-2020-3021396
Office of Small Business Advocate	:	C-2020-3021579
Lower Providence Township	:	C-2020-3021993
Steven and Alina Burda	:	C-2020-3022127
	:	
v.	:	
	:	
Audubon Water Company	:	

RECOMMENDED DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This Decision recommends that the proposed settlement (Joint Petition or Settlement) filed by Audubon Water Company, the Office of Consumer Advocate, the Office of Small Business Advocate, Lower Providence Township and the Commission’s Bureau of Investigation and Enforcement (Joint Petitioners or Settling Parties) be approved in its entirety, without modification, because it is supported by substantial evidence and is in the public interest. This decision also recommends that the Complaints of Steven and Alina Burda and Dennis Zajac be dismissed. By order dated September 17, 2020, the Commission suspended the proposed rate increase and tariff until April 19, 2021.

Audubon Water Company (Audubon, Company or AWC) filed this action seeking to increase Audubon’s total annual operating revenues for water service by approximately \$934,236, or 41.1%, effective September 19, 2020. The Settling Parties agreed to

a “black box settlement” that increases annual revenue by \$703,000, or 32%, which total increase will be implemented in two phases. The Settlement provides that following the Commission approval of this Settlement, the Company will be permitted to implement a \$503,000 increase no earlier than April 19, 2021, upon at least one day’s notice, and a \$200,000 increase effective on April 19, 2022. The increases will be implemented across the board to all rate classes. Under the proposed Settlement, the bill for the typical residential customer using 4,000 gallons of water per month would increase from \$38.84 to \$47.73 per month in Phase 1 and, in Phase 2, an additional increase of \$3.55 per month to \$51.28 per month.

Audubon will also work cooperatively with Lower Providence Township on distribution main and associated appurtenances projects. Additionally, in response to concerns raised by other parties and to aid Audubon in continuing to provide safe and reliable water service, the Company will enhance its record-keeping and address operational issues related to its facilities such as hydrants and valves.

The petition filed by the Joint Petitioners is titled “Joint Petition for Full Settlement of Rate Proceedings.” However, the settlement is addressed herein as a partial settlement since a formal objection was filed by Complainants Steven and Alina Burda to the amount of the compromise rate increase “given the facts and circumstances” and that Complainant Dennis Zajac did not sign the Settlement. The record nevertheless supports a finding that the resolution of the issues and the agreement reached in the Joint Petition is in the public interest; therefore, it is recommended that the Settlement be approved.

HISTORY OF THE PROCEEDING

On July 20, 2020, Audubon Water Company, Utility Code 210060, filed Supplement No. 3 to Tariff Water – Pa. PUC No. 4 (Supplement No. 3) with the Pennsylvania Public Utility Commission (Commission) to become effective September 19, 2020. Supplement No. 3 would increase Audubon’s total annual operating revenues for water service by approximately \$934,236, or 41.1%.

On August 6, 2020, Dennis Zajac filed a formal Complaint against the rate increase, Docket No. C-2020-3021410.

On August 19, 2020, the Office of Consumer Advocate (OCA) filed a Formal Complaint, Docket No. C-2020-3021396.

On August 27, 2020, the Office of Small Business Advocate (OSBA) filed a Formal Complaint, Docket No. C-2020-3021579.

On September 1, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) entered an appearance.

On September 17, 2020, Lower Providence Township filed a Formal Complaint, Docket No. C-2020-3021993.

Also, on September 17, 2020, pursuant to the Public Utility Code, 66 Pa. C.S. § 1308(d), the Commission suspended the filing until April 19, 2021, unless permitted by Commission Order to become effective at an earlier date. The Commission also ordered an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Audubon's proposed Supplement No. 3, as well as Audubon's existing rates, rules, and regulations.

On September 24, 2020, Steven and Alina Burda filed a Formal Complaint, Docket No. C-2020-3022127.

On or about September 25, 2020, an E-serve Notice was issued by the Commission setting a Prehearing Conference in the above-captioned proceedings for October 30, 2020, before Administrative Law Judge Darlene Heep, the undersigned.

On September 28, 2020, Audubon filed a compliance tariff that suspended Supplement No. 3 until April 19, 2021.

By Prehearing Conference Order dated September 29, 2020, the parties were directed to file Prehearing Conference Memoranda by October 28, 2020.

Audubon filed a Revised Supplement No. 3 to Tariff Water – Pa. PUC No. 4 on October 1, 2020.

On October 28, 2020, Audubon, I&E, OCA, OSBA and Lower Providence Township filed prehearing memoranda.

The Prehearing Conference was held on October 30, 2020. Audubon, Dennis Zajac, I&E, OCA, OSBA, and Lower Providence Township were in attendance.

On November 5, 2020, a Prehearing Order was issued. This order set forth various procedural rules and due dates, including deadlines for submission of testimony and exhibits.

On Thursday, November 19, 2020, at 6:00 p.m. and Friday, November 20, 2020, at 1:00 p.m., Public Input Hearings were held telephonically due to the ongoing COVID-19 pandemic.

On December 21, 2020, Audubon advised that Audubon, I&E, OCA, OSBA, Lower Providence Township and Complainants Zajac and Burda all agreed to waive cross examination.

On December 22, 2020, a hearing was held for the purpose of admitting testimony and exhibits. The following testimony and exhibits were admitted:

Audubon Water Company

AWC Direct Testimony/Exhibits

- AWC Statement No. DMK-1: Direct Testimony of Dennis M. Kalbarczyk
- AWC Exhibit No. 1: Exhibit of Dennis M. Kalbarczyk
- AWC Exhibit No. 2: Exhibit of Dennis M. Kalbarczyk

AWC Rebuttal Testimony/Exhibits

AWC Statement No. DMK-1R: Rebuttal Testimony of Dennis M. Kalbarczyk
AWC Exhibit No. 1R: Exhibit of Dennis M. Kalbarczyk
AWC Exhibit No. 2R: Exhibit of Dennis M. Kalbarczyk
AWC Exhibit No. 3R: Exhibit of Dennis M. Kalbarczyk
AWC Statement No. JHR-1R: Rebuttal Testimony of J.H. Russell

AWC Rejoinder Outline Testimony/Exhibits

AWC Statement No. DMK-1RJ: Rejoinder Outline of Dennis M. Kalbarczyk
AWC Exhibit No. 1RJ: Exhibit of Dennis M. Kalbarczyk
AWC Exhibit No. 2RJ: Exhibit of Dennis M. Kalbarczyk
AWC Statement No. JHR-1RJ: Rejoinder Outline of J.H. Russel

OSBA

Audubon Water Company; R-2020-3020919 / OSBA Testimony

OSBA Statement No. 1, the Direct Testimony of Brian Kalcic
OSBA Statement No. 1-R, the Rebuttal Testimony of Brian Kalcic (which includes Exhibit BK-1R)
OSBA Statement No. 1-S, the Surrebuttal Testimony of Brian Kalcic

Lower Providence Township

Direct Testimony of Stephanie Butler, P.E. verified on November 18, 2020 with “Exhibit A” through and including “Exhibit D”

Direct Testimony of Michael Rohlfing, Fire Marshal of Lower Providence Township verified on November 18, 2020

OCA

Scott J. Rubin:

- OCA Statement 1
- OCA Schedule SJR-1 (Updated in OCA Statement 1S)
- OCA Schedule SJR-2
- OCA Schedule SJR-3
- OCA Schedule SJR-4
- OCA Schedule SJR-5
- OCA Statement 1S
- OCA Schedule SJR-6S
- OCA Schedule SJR-7S
- OCA Schedule SJR-8S

Stacy L. Sherwood:

- OCA Statement 2
- OCA Statement 2, Appendix A
- OCA Statement 2, Appendix B
- OCA Statement 2, Appendix C
- OCA Schedule SLS-1
- OCA Schedule SLS-2
- OCA Schedule SLS-3
- OCA Schedule SLS-4
- OCA Schedule SLS-5
- OCA Schedule SLS-6
- OCA Schedule SLS-7
- OCA Schedule SLS-8
- OCA Schedule SLS-9
- OCA Schedule SLS-10
- OCA Schedule SLS-11
- OCA Schedule SLS-12
- OCA Statement 2S
- OCA Schedule SLS-1R
- OCA Schedule SLS-2S
- OCA Schedule SLS-3S
- OCA Schedule SLS-4S
- OCA Schedule SLS-5S
- OCA Schedule SLS-6S
- OCA Schedule SLS-7S
- OCA Schedule SLS-8S
- OCA Schedule SLS-9R
- OCA Schedule SLS-10S
- OCA Schedule SLS-11R

Aaron Rothschild:

- OCA Statement 3
- OCA Statement 3, Appendix A
- OCA Statement 3, Appendix B
- OCA Schedule ALR-1
- OCA Schedule ALR-2
- OCA Schedule ALR-3
- OCA Schedule ALR-4
- OCA Schedule ALR-5
- OCA Statement 3S

Jerome D. Mierzwa:

- OCA Statement 4
- OCA Schedule JDM-1
- OCA Statement 4S
- OCA Schedule JDM-1Revised

Terry L. Fought:

- OCA Statement 5
- OCA Statement 5, Appendix A
- OCA Exhibit TFL-1
- OCA Exhibit TFL-2
- OCA Exhibit TFL-3
- OCA Exhibit TFL-4
- OCA Exhibit TFL-5
- OCA Exhibit TFL-6
- OCA Exhibit TFL-7
- OCA Statement 5S
- OCA Exhibit TFL-8
- OCA Exhibit TFL-9
- OCA Exhibit TFL-10

I&E

I&E Direct Testimony/Exhibits

I&E Statement No. 1: Direct Testimony of John Zalesky

I&E Exhibit No. 1: Exhibit of John Zalesky

I&E Statement No. 2: Direct Testimony of Anthony Spadaccio

I&E Exhibit No. 2: Exhibit of Anthony Spadaccio

I&E Statement No. 3: Direct Testimony of Esyan Sakaya

I&E Exhibit No. 3: Exhibit of Esyan Sakaya

I&E Surrebuttal Testimony/Exhibits

I&E Statement No. 1-SR: Surrebuttal Testimony of John Zalesky

I&E Statement No. 2-SR: Surrebuttal Testimony of Anthony Spadaccio

I&E Statement No. 3-SR: Surrebuttal Testimony of Esyan Sakaya

I&E Exhibit No. 3-SR: Exhibit of Esyan Sakaya

On December 23, 2020, a Briefing Order was issued establishing the deadlines and requirements for main and reply briefs. Main briefs were due on or before January 11, 2021, and reply briefs were due on or before January 19, 2021.

On January 8, 2021, the parties advised that most of the parties were nearing settlement and they requested an extension of time to file settlement documents which request was granted.

On January 20, 2021, AWC, OCA, OSBA, Lower Providence Township and I&E filed a “Joint Petition for Full Settlement of Rate Proceeding.” This Joint Petition includes a Tariff Water – Pa. PUC No, 4, Supplement No. 5.

By cover letter and email from OCA, Complainants Zajac and the Burdas were sent a copy of the Joint Petition for Settlement and advised of the following:

- You may **join** in the proposed Settlement, which will have the effect of discontinuing your Formal Complaint. To join the Settlement, sign and return the enclosed Signature Page to Judge Heep by emailing it to her no later than February 1, 2021.
- You may **object** to the Settlement. You must submit objections to Judge Heep by email no later than February 1, 2021.
- You may **disagree with but not actively oppose** the Settlement. You must submit your disagreement to Judge Heep by email no later than February 1, 2021.

On January 21, 2021, Mr. Zajac sent an email to the undersigned and all parties requesting “additional information” and expressing concern about terms of the settlement; and Mr. Burda sent an email, also expressing concern about terms in the settlement and seeking more information. The undersigned advised the parties that as these communications appeared to be settlement discussions, such discussions should be held among the parties and not include the Administrative Law Judge.

On January 31, 2021, Complainants Steven and Alina Burda emailed an objection to the Settlement, particularly to the amount of the compromise increase.

The record closed on the date objections were due, February 1, 2021. This matter is now ready for a decision.

FINDINGS OF FACT

1. Audubon Water Company provides water service to customers in portions of Lower Providence Township and adjacent areas in Montgomery County, Pennsylvania.

2. AWC is regulated by the Commission.
3. The last rate increase for AWC approved by the Commission was in 2012.¹
4. I&E is the prosecutory bureau of the Commission for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for enforcing compliance laws and regulations.²
5. Lower Providence Township is a township of the second-class in Pennsylvania whose residents receive water from AWC.
6. Complainant OCA is authorized to represent the interests of consumers before the Commission.³
7. Complainant OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act.⁴
8. Dennis Zajac is a customer of AWC in Collegeville, Pennsylvania.
9. Steven and Alina Burda are customers of AWC in Audubon, Pennsylvania.
10. The parties engaged in extensive discovery.

¹ See Docket No. R-2012-2286118.

² *Implementation of Act 129 of 2008 Organization of Bureau and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

³ Act 161 of 1976, 71 P.S. § 309-2.

⁴ Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

11. Audubon's service territory is generally described by Perkiomen Creek to the west, the Schuylkill River to the south, Rittenhouse, and Egypt Road to the east and to the north a line paralleling Woodland Avenue and continuing west to Perkiomen Creek.⁵

12. As of March 31, 2020, the Company provided service to 2,629 residential customers, 161 commercial customers, 29 multi-family service connections, 3 public customers and 212 public and 105 private fire protection units.⁶

13. Under current rates, for the forecasted 12 months ended March 31, 2021, Audubon projected to earn a negative 30.26% return on equity.⁷

14. In this base rate case, AWC originally sought an increase of total annual operating revenue for water service by \$934,236 revenue increase or 41.1%.⁸

15. Under the terms of the Settlement, Audubon shall be permitted to implement a \$703,000 increase in two phases.⁹

16. Under the Settlement, following Commission approval and no earlier than April 19, 2021, upon one day's notice, the Company will be permitted to implement a \$503,000 increase, with an additional \$200,000 increase effective on April 19, 2022.¹⁰

17. Under the terms of the Joint Petition for Settlement, the typical residential customer using 4,000 gallons of water per month will pay the following customer charge and usage rates:

⁵ AWC Statement No. DMK-1: Direct Testimony of Dennis M. Kalbarczyk at 2.

⁶ AWC Statement No. DMK-1: Direct Testimony of Dennis M. Kalbarczyk at 3.

⁷ AWC Statement DMK-1 at 9.

⁸ Schedule G-2 of the initial filing shows the residential increase as 42.56%.

⁹ Joint Petition at ¶ 21.

¹⁰ Joint Petition at ¶ 21.

	Company ¹¹ Present	Company Proposed	Settlement Step 1	Settlement Step 2	Overall % Increase
Customer Charge	\$12.73	\$18.00	\$15.60	\$16.80	31.97%
Usage Rate	\$6.5280	\$9.3461	\$8.0323	\$8.6197	32.04%

18. This Settlement increases rates across-the-board to all customer classes.¹²

19. The Settlement includes a plan that Audubon will work with the Lower Providence Township Fire Marshall to address fire hydrant flow concerns and institute a program to replace fire hydrants of greatest concern first.¹³

20. Lower Providence Township is undertaking a roadway structure and improvement project that will involve AWC facilities.¹⁴

21. Under the Settlement, when Lower Providence Township undertakes certain roadway structure and improvement projects, AWC and Lower Providence Township will share information and cooperate for planning and construction purposes, which will ultimately save costs.¹⁵

22. To continue to provide safe and reliable water service, with the rate increase, AWC will be able to meet its financial obligations and address matters such as plant additions and maintenance projects, including fire hydrant issues.¹⁶

¹¹ I&E Statement in Support at 8.

¹² Joint Petition at ¶ 22, Appendix B-C.

¹³ Joint Petition at ¶ 27.

¹⁴ Direct Testimony of Stephanie Butler, ll. 22-43; Joint Petition at ¶ 27.

¹⁵ Direct Testimony of Stephanie Butler, ll. 55-70, 130-148. Audubon Water Company and Lower Providence Township acknowledged the requirements of the Public Utility Confidential Security Information Disclosure Protection Act and state that they will abide by this Act regarding provision of Confidential Security Information. *See* Joint Petition at ¶ 27, Joint Petition at 9, n.4.

¹⁶ Testimony of JH Russel at 3, 7-8; AWC Statement DMK -1 and 1R.

PUBLIC INPUT HEARINGS

Telephonic Public Input Hearings were held on November 19 and November 20, 2020. While several people called in to listen to the Public Input Hearing on November 19, 2020, no one testified. Four customers of AWC testified at the Public Input Hearing held on November 20, 2020. Common concerns were the quality of the water and that during a pandemic was not the proper time to raise rates.

Terri Rohr of Audubon stated that she was concerned that the 43% increase in rates would not result in a 43% increase in quality. She asserted that the water provided is hard. She also voiced that unlike other bills, there are few actions that a family can take to reduce a water bill, such as switch to another company to keep their costs down. She also noted that with the pandemic and associated business closings and furloughs, now was not the time for a large increase in rates. Tr. 59-60.

AWC customer Joseph Podrazik of Audubon also testified that the water is hard and results in having to replace pipes every couple of years. He was not against an increase in general but found the timing during a pandemic unacceptable and suggested smaller increases throughout the years rather than waiting so long for a large increase. Tr. 63.

Gaetano Chetta is an AWC customer in Audubon. He objected to an increase during the pandemic and economic instability. He also asserted that his neighborhood has had many problems with the water company and their ability to manage and maintain a safe and effective supply. He stated that they constantly have groundwater from facility plumbing when the neighborhood was developed and have asked Audubon to investigate. He also had concerns about the quality and hardness of the water and water leakage. Mr. Chetta asserted that the Company should address its inefficiencies in the system rather than increase the price for the users all at once. Tr. 65-67.

Complaint Dennis Zajac also participated in the public input hearing. He testified that the amount of the rate increase for him would be \$21.00 per month, which would consume

most of any social security increase he might receive. He finds a 43% increase totally out of line. He also asserted that mud flowed out of a fire hydrant when there was a fire up the street from his home. Mr. Zajac also suggested that AWC should work with other entities such as the Lower Providence Sewer Authority to take advantage of open trenches when system work is done. Tr. 70-74.

DESCRIPTION OF THE PARTIAL SETTLEMENT

The Joint Petitioners submitted a Joint Petition that addresses and resolves the issues of concern to the signing parties. Attached to the Joint Petition are the following Appendices:

APPENDIX A Tariff Supplement

APPENDIX B

APPENDIX C

Proof of Revenues

Typical Customer Bill Analysis

APPENDIX D Audubon Water Company Statement in Support

APPENDIX E Bureau of Investigation & Enforcement Statement in Support

APPENDIX F Office of Consumer Advocate Statement in Support

APPENDIX G Office of Small Business Advocate Statement in Support

APPENDIX H Lower Providence Township Statement in Support

The Settlement consists of the following terms and conditions quoted verbatim and for ease of reference, the headings and paragraph numbering are the same as they appear in the Settlement:

A. Revenue Requirement

21. Audubon shall be permitted to implement a \$703,000 increase in two phases as set forth in the proposed Tariff Supplement attached hereto as Appendix A (“Settlement Rates”). Regarding Phase 1, following Commission approval of this Settlement and no earlier than April 19, 2021, upon one day’s notice the Company will be permitted to implement a \$503,000 increase. An additional \$200,000 increase will be effective on April 19, 2022.

B. Rate Design/Structure

22. Rates were designed to produce an across the board, moderated increase. Attached as Appendix B is a Proof of Revenues showing the rate design in greater detail. Attached as Appendix C is a Typical Customer Bill Analysis.

C. Other Terms

23. Concerning Isolation Valves, Audubon Water Company agrees to maintain a log of when each valve has been exercised or attempted to be exercised in a 5-year period. The log shall note when valves are found to be inoperable and shall note the repairs to the valves. If the valves were not able to be repaired immediately, Audubon Water Company agrees to submit a report to the Commission with a copy to OCA and I&E on 4/1 of each calendar year for the next 3-years with action taken or to be taken in upcoming year, i.e., for replacing or repairing the isolation valves.

24. Concerning Pressure Surveys, Audubon Company agrees to compile and maintain pressure readings at the highest and lowest ground elevations during periods near maximum and minimum usage for each distribution system and pressure zone (“Field Tests”), beginning 4/1/21. In its next rate case, the company shall also provide these compiled Field Tests in an Excel format, and a customer complaint log that indicates the resolution of pressure complaints.

25. Concerning Customer Complaints, on February 1, 2022 and in its next rate filing, Audubon Water Company agrees to provide a single complaint log (in a live Excel format) that satisfies 52 Pa. Code § 65.3. The complaint log will include the following categories that can be sorted by date and location: dirty water, taste, odor, color, customer property damage, leaking meter, request for meter testing, request for water testing, and incomplete surface restoration.

26. Audubon Water Company agrees to withdraw its request to increase its DSIC cap. Audubon Water agrees that it will file a Long-Term Infrastructure Improvement Plan with the Commission pursuant to Docket No. L-2012-2317274, 66 Pa. C.S. § 1352, and 52 Pa. Code §§ 121.1-121.8.

27. Lower Providence Township Provisions.

a. Township Intersection Improvement Project. Audubon Water Company and Lower Providence Township will work cooperatively and in good faith, including sharing information on a timely basis, to achieve the water distribution main and associated appurtenances (i.e., valves, hydrants, etc., if any) relocation project related to the State Route 4004-Parke Avenues, Eagleville Road, and Crawford Road Intersection Improvement Project. Audubon Water Company will provide an engineered map of its facilities in electronic format via

a flash drive or similar medium to the Township within 15 business days of final settlement approval and the Township will treat this information as Confidential Security Information in that this map will not be disclosed beyond Township personnel, engineering firms that require it for their work on the project, or PennDOT. To the extent the Township is required to disclose specific locational information regarding Audubon's facilities as part of a competitive bidding process, any map indicating the location of Audubon's facilities will be subject to a non-disclosure agreement between the Township and any party receiving the map that prohibits sharing locational information of Audubon's facilities except to the extent necessary for the project and requires destruction of any materials containing locational information of Audubon's facilities when that entity no longer has a need for the information. The non-disclosure agreement will be presented to Audubon for review prior to execution. Audubon shall also provide the Township a facility relocation design plan within fifteen business days of final settlement approval. The Township will seek to obtain any and all available grants or funding for this project to cover Audubon Water Companies costs associated with the project. In the event the Township does not obtain the full amount of funding to cover Audubon Water Company's costs related to the project, Audubon Water Company will seek to recover the unfunded costs associated with and related to relocating its water distribution main relocation through its Distribution System Improvement Charge (DSIC) to the extent the unfunded costs are DSIC eligible. Once the final design and a timeline for the project is complete, including Audubon's construction plan and which considers the timeline for Commission consideration of the LTIP, Audubon Water Company will file for Commission approval of its LTIP within two months. After an LTIP is approved by the Commission that includes the water distribution main replacement, Audubon will, consistent with the final timeline for the project, initiate and complete its part of the work. If the Commission does not approve full recovery of Audubon Water Company's DSIC-eligible costs associated with and related to the water main relocation project through Audubon's DSIC, the Township will pay a portion of Audubon's costs which portion will be the lesser of \$100,000 or 50% of Audubon's actual and unrecovered costs. This settlement shall not be construed to bind Lower Providence Township to compensate Audubon for any unrecovered utility facility costs outside of the immediate project area. Audubon will provide proof of costs and the amount of costs that were not recovered through the DSIC or base rates prior to the Township being obligated to pay Audubon for any unrecovered costs. Audubon Water Company will not begin any construction or construction preparation work prior to a Commission decision on its LTIP. No party to this settlement will oppose Audubon Water Company's inclusion of the water main replacement in its LTIP. No party to this settlement will generally oppose Audubon's recovery of costs for relocation and replacement of its water mains associated with the project through Audubon's DSIC or base rates, except that OCA, I&E, and OSBA reserve the right to challenge may review and challenge (1) Audubon's proof of costs and (2) whether specific costs incurred for the project are eligible for DSIC recovery."

b. Fire Hydrants. Through its fire hydrant replacement program, Audubon will prioritize a list of high importance hydrants identified by Lower Providence Township and its Fire Marshal to address hydrants of greatest concern first. Audubon will review with LPT's Fire Marshal hydrant flow tests in 2021-2022 to prioritize Audubon's replacement program. Audubon, in the presence of the Lower Providence Township will perform volume tests on the hydrants at the choice of the Fire Marshal within sixty days of the approval of this Settlement. If any hydrants shall show deficient water volume, Audubon will develop a plan to remedy the same.

28. The Tax Cuts and Jobs Act of 2017 impacts deferred income taxes resulting in reclassification of an amount of excess deferred income taxes ("excess ADIT") to a regulatory liability due to the change in income tax rates from 35% to 21%. The parties agree that the starting balance is \$192,309 and is being amortized over a period of 15 years beginning in the fully projected future test year in this proceeding.

The amount of excess ADIT to be amortized (credited) on an annual basis (\$12,821) is incorporated into the settlement revenue requirement calculation starting with the effective date of new rates, producing a remaining balance of \$179,488 (\$192,309 - \$12,821) at the end of the FPFTY ending March 31, 2022, and so on till fully amortized. Audubon agrees to amortize the remaining excess ADIT balance annually until the full amount is refunded to ratepayers. Subject to any future state and/or federal tax changes, the remaining unamortized excess ADIT balance will continue as a reduction to rate base in all future proceedings until the full amount is returned to ratepayers.

D. Standard Terms

29. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue but rather as an agreed-to compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners or to enforce this Settlement.

30. This Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement.

31. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching this

Settlement, the Joint Petitioners thoroughly considered all issues and give and take of positions. As a result of that consideration, the Joint Petitioners believe that the settlement agreement meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

32. All Joint Petitioners shall support the Settlement and make reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJ in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

33. The Joint Petitioners recognize that this Joint Petition is a settlement of, and binding upon, only among the parties signing this document. The OCA represents it will, on the date of the signing of this settlement petition, send an email providing instructions concerning the Complainants' opportunity to address the proposed Settlement. OCA also represents that the emailed letter will explain that the Complainant has until February 1, 2021, to join, disagree but not actively oppose, or object to the proposed settlement and provides contact information for ALJ Heep and the OCA.

34. The Joint Petitioners agree that this document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners and such counterparts shall be considered as one document.

35. The Joint Petitioners agree and request that if the Settlement is approved, the OCA's Formal Complaint in this matter should be marked satisfied and closed due to the Settlement.

Joint Petition for Full Settlement of Rate Proceeding at 8-15 (internal footnote omitted).

LEGAL STANDARDS/BURDEN OF PROOF

The Settlement presented here is not a full settlement given that Complainants Mr. and Mrs. Burda have objected to the Settlement and Mr. Zajac did not sign the settlement presented by Joint Petitioners Audubon, OCA, OSBA, Lower Providence Township and I&E. Therefore, the standards for partial settlement are considered herein.

A. Legal Standard for Partial Settlement

The purpose of this investigation is to establish rates for AWC's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.¹⁷ A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa.Cmwlt. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*,¹⁸ and *Fed. Power Comm'n v. Hope Nat. Gas Co.*¹⁹ In *Bluefield*, the United States 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 reasonable at one time and become too high or too low by changes affecting opportunities

¹⁷ 66 Pa.C.S. § 1301.

¹⁸ 262 U.S. 679 (1923).

¹⁹ 320 U.S. 591 (1944).

for investment, the money market and business conditions generally.^[20]

The Commission encourages parties in contested on-the-record proceedings to settle cases.²¹ Settlements eliminate the time, effort and expense of litigating a matter to its conclusion, which could include the additional expense of review of the Commission's decision by the appellate courts of Pennsylvania. Reducing or avoiding such costs benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who may have to bear the financial burden of such litigation in future rate cases.

A "settlement" is a compromise of the positions that the parties hold. When parties in a proceeding reach a settlement, the principal consideration for the Commission is whether the agreement reached is in the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

While the Commission has historically approved the use of "black box" settlements, it is also the Commission's duty to ensure that the public interest is protected. There must be sufficient information provided in a settlement for the Commission to determine that a revenue requirement calculation and tariffs are in the public interest and properly balance the interests of ratepayers and utility stockholders. *See Pa. Pub. Util. Comm'n v. Pa. Power Co.*, 55 Pa. P.U.C. 552, 579 (1982); *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Dist. Corp.*, 73 Pa. P.U.C. 552, 603-605 (1990). As the Commission has stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest.

²⁰ 262 U.S. at 692-93.

²¹ *See* 52 Pa.Code § 5.231.

Pa. Pub. Util. Comm'n Aqua Large Users Group Office of Consumer Advocate Office of Small Business Advocate Pa. Am. Water Co. Athens Borough John Bahnweg, v. Aqua Pa., Inc., Docket Number R-2018-3003558 (Order entered May 9, 2019) referencing *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767(1991).

The Commission's standards for reviewing a partial settlement are the same as those for deciding a fully contested case. *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority -- Stage 1; Petition of Pittsburgh Water & Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, Docket Number M-2018-2640802 (Order Entered June 18, 2020); *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, 1997 Pa. PUC Lexis 51. Substantial evidence consistent with statutory requirements must support the proposed settlement. *Popowsky v. Pa. Pub. Util. Comm'n*, 805 A.2d 637 (Pa.Cmwlth. 2002); *ARIPPA v. Pa. Pub. Util. Comm'n*, 792 A.2d 636 (Pa.Cmwlth. 2001). "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. of N.Y. v. Nat'l Lab. Rels. Bod.*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

B. Burden of Proof for Litigated Issues

The public utility bears the burden of proof to establish the justness and reasonableness of its requested rate increase. As set forth in Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a):

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

The Commonwealth Court has stated:

Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. Pub. Util. Comm'n, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). *See also, Brockway Glass v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a *prima facie* case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1236 (Pa. 1983). Furthermore, the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” *Lansberry v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990). Additionally, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *Id.* at 602. A utility has an affirmative burden to establish the justness and reasonableness of its rate request.

However, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *See, e.g., Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Tel. Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

OBJECTION TO THE PARTIAL SETTLEMENT

Complainant Zajac did not sign the Settlement. He also did not file a formal objection to the Settlement by the required date.²²

Complainants Steven and Alina Burda submitted a written objection to the partial settlement. The Burdas specifically object that the proposed 32% increase is still high given the facts and circumstances. They asked that the parties reconsider and revise the settlement to a 20% to 24% range.

The objection of the Burdas does not provide a sufficient basis upon which to recommend that the Commission not approve the Joint Petition for Settlement. How the Burdas arrived at their recommended increase is not specified. Also, the increase contained in the Settlement allows AWC the resources for improvements and additions to the system to enhance the service provided as well as eliminates a sudden large rate impact by spreading the increase, which is less than originally requested, over a two-year period.²³

The objection of the Burdas does not overcome the evidence that the Settlement and the rates agreed to therein are lawful, just, and reasonable, as more fully discussed below. It will be recommended that the Complaints of Mr. Zajac, at Docket No. C-2020-3021410, and Mr. and Mrs. Burda, at Docket No. C-2020-3022127, be dismissed.

DISCUSSION OF THE PARTIAL SETTLEMENT

The Settlement in this matter is reasonable and in the public interest. The total proposed increase is phased in to avoid rate shock and is spread across all rate classes. AWC

²² As noted in the History of the Proceedings, on January 21, 2021, Mr. Zajac sent an email requesting additional information from the parties and expressing concern about the Settlement.

²³ In their January 21, 2021 emails, Mr. Burda and Mr. Zajac each expressed concern that Audubon fire hydrants were not working properly. This settlement directly addresses this concern and provides that Audubon will inspect, test and, where necessary, replace fire hydrants. Ensuring that fire hydrants work is in the public interest.

originally sought a \$934,236 increase. The Settlement Rates are designed to produce an increase of annual water revenue of \$703,000, through a \$503,000 increase effective April 19, 2021, and an additional \$200,000 increase effective April 19, 2022.

Under the proposed Settlement, the bill for the typical residential customer using 4,000 gallons of water per month would increase from \$38.84 to \$47.73 per month in Phase 1 and, in Phase 2, an additional increase of \$3.55 per month to \$51.28 per month. The overall typical increase would be to \$51.28 per month in two phases over two years rather than rather than to \$55.38 beginning in April 2021 as originally proposed by the Company.²⁴

Additionally, as part of the settlement, AWC will work with Lower Providence Township to address service issues and coordinate the water main and associated appurtenances relocation work required for the Township to complete an intersection improvement project. The Settlement also provides that AWC begin certain recordkeeping and maintenance practices, provide a variety of reports to the Commission and parties of the Settlement and file a Long-Term Infrastructure Improvement Plan with the Commission in order to enhance the service and in the future use its Distribution System Improvement Charge (DSIC) to fund DSIC eligible projects.

A. Revenue Requirement and Increase

According to AWC witness Kalbarczyk, under present rates, AWC would not meet its operating costs and earn a reasonable return on its investment while operating at a net loss. For the forecasted 12 months ended March 31, 2021, Audubon projects that it will earn a negative 30.26% return on equity at current rates.²⁵ It is AWC's position that without the appropriate rate relief, the Company will not be able to continue to provide environmentally safe, reliable and efficient water and sewer utility services to its customers and meet its financial obligations.²⁶ Particularly at risk without the Settlement increase are several plant addition

²⁴ See Settlement Appendix C; OCA Statement in Support at 3.

²⁵ AWC Statement DMK-1 at 9.

²⁶ Audubon Statement in Support at 9.

projects, equipment upgrades, vehicle purchases, meter replacement program, distribution replacement programs for looping and system reliability, and information technology system upgrades AWC proposes to continue to provide a high level of service.²⁷

The settlement rate is less than that originally requested by AWC. OCA supports this compromise increase, stating that it is reasonable in the age of a pandemic and the resultant circumstances.²⁸ AWC initially sought a 43% increase in rates and OCA observes that the compromise rate increase is “near the lowest amount feasible to ensure the financial viability of the Company.”²⁹ OCA calculates that the \$503,000 increase effective April 19, 2021 is a 22.92% increase and the additional \$200,000 increase effective April 19, 2022 is a 7.41% increase over the first phase increase. This is a total 32.03% increase rather than the over 40% increase initially sought.³⁰

I&E notes that the Settlement revenue increase is approximately \$90,000 lower than I&E’s litigation position, which recommended an overall increase of \$792,485,³¹ and that this is a savings of \$231,236 from Audubon’s filed request of \$934,236. I&E analyzes the ratemaking claims contained in base rate filings including operating and maintenance expenses, rate base, taxes, cash working capital, rate structure, capital structure, and the cost of common equity and long-term debt to determine its recommendation.³²

As witnesses stated during the Public Input Hearing, and as the eCompany acknowledges, AWC has naturally hard water from its source wells. Audubon asserts that the water hardness characteristics are safe and in compliance with DEP regulations. However, the hardness can affect the usable life expectancy of AWC meters.³³ The rate increase sought here

²⁷ AWC Statement DMK-1.

²⁸ OCA Statement in Support at 3. The Commission has not found the economic circumstances during the pandemic a compelling reason to not raise rates, especially when the rate increase is phased in. See *Pa Pub. Util. Comm’n v. Phila. Gas Works*, Docket Number R-2020-3017206 (Order entered November 19, 2020) at 56.

²⁹ OCA Statement in Support at 3 referencing OCA St. 1 at 23; OCA St. 2S at 1-2.

³⁰ OCA Statement in Support at 2-3.

³¹ I&E St. No. 1-SR, p. 3.

³² I&E Statement in Support at 5.

³³ Testimony of JH Russel at 12.

will assist implementation of a meter replacement program, which will have a positive impact for the Company and the ratepayers.

B. Revenue Allocation and Rate Design

The Settlement increases rates to all customer classes, across the board.³⁴ This reflects the recommendation of OSBA witness Kalcic who stated that given that AWC did not provide a class cost of service study in these proceedings, an across-the-board revenue adjustment was “both required and appropriate.”³⁵

I&E agreed, asserting that the proposed across the board increase is appropriate because the Company did not complete a cost-of-service study (COSS) and therefore there was no justification to target a specific rate or customer class. According to I&E, a proportional scale-back is the most reasonable way to design rates given that the Company will recover less than the increase initially requested.³⁶

OSBA does not oppose AWC uniformly increasing customer charges.³⁷ OSBA noted that given the absence of a COSS in these proceedings, uniform increases in customer charges are just and reasonable.³⁸

Although OCA recommended a different rate design and scale back, it finds the Settlement across the board approach a reasonable resolution to achieve settlement.³⁹

The following sets forth the current rates, the proposed rates, and the settlement rates in two phases and provides a comparison of water rates and charges:⁴⁰

³⁴ AWC Statement in Support at 10. Joint Petition at ¶ 22, Appendix B-C.

³⁵ OSBA Statement No. 1, at 4; OSBA Statement in Support at 2.

³⁶ I&E Statement in Support at 7.

³⁷ OSBA Statement No. 1, at 4.

³⁸ *Id.*; OSBA Statement in Support at 3.

³⁹ OCA Statement in Support at f3-4.

⁴⁰ AWC Statement in Support at 10-11.

	Current	Proposed	Settlement (effective April 19, 2021	Settlement (effective April 19, 2022)
Consumption Charges				
Residential per 1,000 Gallons	\$6.5280	\$9.3461	\$8.0323	\$8.6197
All remaining customers first 100,000 gallons/month	\$6.5280	\$9.3461	\$8.0323	\$8.6197
All remaining customers over 100,000 gallons/month	\$4.3346	\$6.1558	\$5.3281	\$5.7229
Customer Charge				
5/8 inch	\$12.73 per month \$38.19 per quarter	\$18.00 per month \$54.00 per quarter	\$15.60 per month \$46.80 per quarter	\$16.80 per month \$50.40 per quarter
3/4 inch	\$12.73 per month \$38.19 per quarter	\$18.00 per month \$54.00 per quarter	\$15.60 per month \$46.80 per quarter	\$16.80 per month \$50.40 per quarter
1 inch	\$32.42 per month \$97.26 per quarter	\$45.00 per month \$135.00 per quarter	\$39.80 per month \$119.40 per quarter	\$42.80 per month \$128.40 per quarter
1 1/2 inch	\$55.20 per month	\$80.00 per month	\$ 67.80 per month	\$72.90 per month
2 inch	\$88.19 per month	\$125.00 per month	\$108.40 per month	\$116.40 per month
3 inch	\$165.60 per month	\$235.00 per month	\$203.60 per month	\$215.60 per month
4 inch	\$275.62 per month	\$400.00 per month	\$338.80 per month	\$363.90 per month
6 inch	\$551.23 per month	\$800.00 per month	\$677.60 per month	\$727.80 per month
8 inch	\$882.05 per month	\$1,200.00 per month	\$1,084.20 per month	\$1,164.60 per month
10 inch	\$1068.43 per month	\$1,500.00 per month	\$1,313.30 per month	\$1,410.60 per month
12 inch	\$1670.48 per month	\$1,800.00 per month	\$1,800.00 per month	\$1,935.00 per month
Temporary Rates/Water for Building Purposes				
Single Family Dwelling	\$129.46 per month	\$184.56 per month	\$159.13 per month	\$170.92 per month

Public Fire Protection Rates				
Annual charge per hydrant	\$233.46	\$333.00	\$288.00	\$308.40
Or a monthly charger per hydrant	\$19.46	\$27.75	\$24.00	\$25.70
Private Fire Protection Rates				
1 inch	\$23.35 per month \$280.15 per annum	\$35.00 per month \$420.00 per annum	\$28.75 per month \$345.00 per annum	\$30.80 per month \$369.60 per annum
2 inch	\$36.97 per month \$443.57 per annum	\$50.00 per month \$600.00 per annum	\$45.50 per month \$546.00 per annum	\$48.80 per month \$585.60 per annum
3 inch	\$42.81 per month \$513.61 per annum	\$60.00 per month \$720.00 per annum	\$52.50 per month \$630.00 per annum	\$56.50 per month \$678.00 per annum
4 inch	\$52.53 per month \$630.34 per annum	\$75.00 per month \$900.00 per annum	\$64.50 per month \$774.00 per annum	\$69.40 per month \$832.80 per annum
6 inch	\$77.82 per month \$933.84 per annum	\$111.00 per month \$1,332.00 per annum	\$95.50 per month \$1,146.00 per annum	\$102.75 per month \$1,233.00 per annum
8 inch	\$126.46 per month \$1,517.49 per annum	\$180.00 per month \$2,160.00 per annum	\$155.50 per month \$1,866.00 per annum	\$167.00 per month \$2,004.00 per annum
10 inch	\$173.15 per month \$2,077.79 per annum	\$245.00 per month \$ 2,940.00 per annum	\$212.75 per month \$ 2,553.00 per annum	\$228.60 per month \$2,743.20 per annum
Hydrants	\$77.82 per month \$ 933.54 per annum	\$111.00 per month \$1,332.00 per annum	\$95.50 per month \$ 1,146.00 per annum	\$102.75 per month \$1,233.00 per annum

C. Isolation Valve Maintenance and Repair

OCA finds helpful that AWC has agreed to maintain a log recording when each isolation valve is exercised and make sure that all valves are exercised within 5 years. AWC will begin to maintain logs of the maintenance of each isolation valve and report the issue to OCA and I&E if valves in need of repair are not immediately addressed.⁴¹

⁴¹ Joint Petition at ¶ 23; AWC Statement in Support at 11; OCA Statement in Support at 4.

AWC agrees to submit a report to the Commission with a copy to OCA and I&E on April 1 of each calendar year for the next 3 years with information about the action taken or to be taken in the upcoming year, *i.e.*, for replacing or repairing the isolation valves. It is the position of OCA that this provision concerning isolation valves prevents increased water loss during a water main break and ensures that isolation valves are being exercised regularly to avoid difficult repair or replacement procedures.⁴²

D. Hydrant Testing and Replacement

Of interest and concern to both Complainants Mr. Zajac and Mr. Burda, as well as expressed during the Public Input Hearing, are the maintenance and operation of the AWC fire hydrants. This issue is addressed in the settlement agreement, which provides that AWC will work with Lower Providence Township on a fire hydrant replacement program.⁴³

As AWC points out, hydrant improvements are a reasonable and necessary cost of providing service.⁴⁴ OCA notes that this program will ensure that ratepayers can rely on water fire hydrants for fire protection services.⁴⁵

E. Pressure Survey

Under the Settlement terms, beginning April 1, 2021, AWC will compile and maintain pressure readings at the highest and lowest ground elevations during periods near maximum and minimum usage for each distribution system and pressure zone (Field Tests). Further, the Company will also provide these compiled Field Tests in an Excel format, and a customer complaint log that indicates the resolution of pressure complaints in its next rate case. OCA supports this measure, finding that it ensures that AWC complies with the requirements for water main pressure under 52 Pa. Code § 65.6.⁴⁶

⁴² See OCA St. 5 at 10-11; OCA Statement in Support at 4.

⁴³ AWC Statement in Support at 8, 12.

⁴⁴ AWC Statement in Support at 10.

⁴⁵ OCA Statement in Support at 6.

⁴⁶ See OCA Statement in Support referencing OCA. St. 5 at 15-16.

F. Customer Complaint Log

AWC will begin to compile a customer complaint log that can be sorted by category, date, and location. OCA states that this log will provide useful information regarding the Company's Supervisory Control and Data Acquisition System (SCADA) as well as ensure compliance with the requirements for investigation and recording of customer complaints under 52. Pa. Code § 65.3.⁴⁷

G. Lower Providence Township Intersection Improvement Program

OCA states that this provision should work to provide necessary information from Audubon to the Township while setting forth a process related to the costs of the project.⁴⁸ AWC will coordinate and share information with Lower Providence Township needed for the township's State Route 4004-Parke Avenues, Eagleville Road, and Crawford Road Intersection Improvement Project.⁴⁹ The terms included in the Settlement provide a means to coordinate road work and AWC facilities maintenance and replacement as well as reduce future issues concerning information sharing, cooperation and cost recovery that involve AWC facilities.

H. No request for DSIC increase

Supplement Number 3's Second Revised Page No. 44 of the rate filing indicated that Audubon was proposing to increase the cap for its DSIC from 5.00% to 7.50%.⁵⁰ Under this Settlement, AWC is withdrawing any request to increase the DSIC cap. Also, AWC agrees to file a Long-Term Infrastructure Improvement Plan (LTIIIP) with the Commission pursuant to Docket No. L-2012-2317274, 66 Pa. C.S. § 1352, and 52 Pa. Code §§ 121.1-121.8.⁵¹

⁴⁷ See OCA Statement in Support at 4-5.

⁴⁸ OCA Statement in Support at 6.

⁴⁹ AWC Statement in Support at 12.

⁵⁰ See Rate Increase filing SUPPLEMENT NO. 3 TO TARIFF WATER - PA P.U.C. NO. 4, Page No. 44.

⁵¹ Joint Petition at ¶ 26.

OCA supports this provision as ensuring compliance with Public Utility Code provisions pertaining to LTIPs and providing rate stability for AWC ratepayers.⁵²

I. Tax Cuts and Job Act of 2017

The federal tax rate was reduced from 35% to 21% under the Tax Cuts and Jobs Act of 2017. As a result, AWC collected excess accumulated deferred income tax (ADIT) from ratepayers and reclassified the excess ADIT as a regulatory liability of \$192,309.⁵³ I&E witness Zalesky raised concerns that AWC did not make a corresponding reduction to rate base and that AWC proposed to amortize this regulatory liability over 15 years starting in 2017 rather than beginning at the end of the fully projected future test year (FPFTY).⁵⁴ I&E noted that amortizing this regulatory liability beginning at the end of the FPFTY is appropriate because this money was originally received from ratepayers and must ultimately be returned to ratepayers.⁵⁵

Under the Settlement, the parties adopt the recommendation of I&E that AWC amortize the excess ADIT amount of \$192,309 through an annual reduction of rate base of (12,820.06) beginning at the end of the FPFTY.⁵⁶

J. Future Proceedings

As part of the Settlement, AWC has agreed to address certain system issues and provide information regarding those efforts in future proceedings. In its next rate filing, in accordance with the Settlement, AWC will provide 1) compiled pressure readings in an Excel format and a customer log that indicates the resolution of pressure complaints,⁵⁷ and 2) a customer complaint log in an excel format that will include categories that can be sorted by date and location. The categories of customer complaints will include dirty water, taste, odor, color,

⁵² OCA Statement in Support at 5.

⁵³ See I&E Exhibit No. 1 Schedule 9.

⁵⁴ See I&E St. No. 1, p. 27.

⁵⁵ I&E St. No. 1-SR, p. 24; I&E Statement in Support at 9.

⁵⁶ See I&E St. No. 1, pp. 27-29; I&E St. No. 1-SR, pp. 22-25; I&E St. No. 1, p. 29.

⁵⁷ Joint Petition at ¶ 24.

customer property damage, leaking meter, request for meter testing, request for water testing, and incomplete surface restoration.⁵⁸

Audubon Water also agrees that it will file a LTIP with the Commission pursuant to Docket No. L-2012-2317274, 66 Pa. C.S. § 1352, and 52 Pa. Code §§ 121.1-121.8.⁵⁹ The reports and the LTIP filing will assist AWC in providing safe and reliable service to its customers.

RECOMMENDATION

As the settling parties state in the Joint Petition:

The Company, I&E, OCA, OSBA, and [Lower Providence Township] engaged in extensive exchange of information, discussions, and negotiations to determine if, consistent with the Commission’s policy to “encourage settlements,” stated at 52 Pa. Code §5.231(a), a settlement was possible. After extensive discovery by the statutory parties, Audubon, I&E, OCA, OSBA, and Lower Providence Township engaged in a series of settlement negotiations. The Settlement is the product of those negotiations, representing give-and-take by all Joint Petitioners. The Settlement is a typical “black box” settlement; that is, without admission on any particular issue though the terms agreed to are enforceable upon Commission approval. The Joint Petitioners agree that this Settlement is a reasonable resolution of competing positions and interests in a way that meets and promotes the public interest. It also represents an outcome that is preferable to the time, expense, and uncertainty of litigation before the Commission and potentially, appellate courts, the reasonable costs of which ratepayers may bear.^[60]

After such negotiation and cooperation, the parties have fairly resolved many issues. Providing good services and what is best for the customers were clearly at the forefront of any discussions. The result is a proposed settlement that is practical, reasonable and

⁵⁸ Joint Petition at ¶ 25.

⁵⁹ Joint Petition at ¶ 26.

⁶⁰ Joint Petition at ¶ 20.

unquestionably in the public interest and in the best interests of the ratepayers. Delaying the increase and spreading it over a two-year period takes into consideration the current economic situation and relieves the customers of a substantial rate increase all at once.

The enhanced maintenance, record-keeping and plant addition projects that would be made possible with the agreement and the increase sought here will assist AWC in continuing to provide reliable, safe water service to its customers. AWC would also be able to address the facilities, fire hydrant and construction coordination with Lower Providence Township, issues raised during the Public Input Hearings as important to AWC customers.

This is a “black box” settlement and therefore all the details surrounding how the settlement was reached were not available. However, I&E is correct that further line-by-line identification of the ultimate resolution of the disputed issues beyond those presented in the Settlement is not necessary as the Settlement “maintains the proper balance of the interests of all parties.”⁶¹

Additionally, the Settlement saves the expense, time and effort involved in pursuing the issues in full litigation. Absent a settlement, it is likely that expensive and time-consuming appeals would have resulted.⁶² This Settlement avoids those expenses, which is in the interests of the public and the customers of AWC.

Therefore, it will be recommended that the Commission approve the “Joint Petition for Full Settlement of Rate Proceeding” without modifications.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 1308(d).

⁶¹ I &E Statement in Support at 10.

⁶² See AWC Statement in Support at 12.

2. Every rate made, demanded, or received by any public utility shall be just and reasonable. 66 Pa.C.S. § 1301.

3. Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767(1991).

4. The Commission has historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. Pub. Util. Comm'n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. Pub. Util. Comm'n v. Citizens' Elec. Co. of Lewisburg*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011).

5. There must be sufficient information provided in a settlement in order for the Commission to determine that a revenue requirement calculation and accompanying tariffs are in the public interest and properly balance the interests of ratepayers and utility stockholders. *See Pa. Pub. Util. Comm'n v. Pa. Power Co.*, 55 Pa. P.U.C. 552, 579 (1982); *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Dist. Corp.*, 73 Pa. P.U.C. 552, 603-605 (1990).

6. The burden of proof in a ratemaking proceeding is on the public utility. *See* 66 Pa.C.S. § 315(a); *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). *See also, Brockway Glass v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

7. A party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, 1990 Pa. PUC

LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Tel. Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

8. The Settlement in the Joint Petition promotes the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

9. The Audubon Water Company has met its burden of establishing that the rates stated in the Joint Petition for Settlement are just and reasonable.

10. Complainants Steven and Alina Burda have not presented sufficient evidence to demonstrate the reasonableness of his proposed adjustment to the rate set forth in the Joint Petition. *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Tel. Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the “Joint Petition for Full Settlement of Rate Proceeding” filed on January 20, 2021 by Audubon Water Company, Lower Providence Township, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate be approved in its entirety, without modification.

2. That Audubon Water Company not place into effect the rates, rules, and regulations contained in Supplement No. 3 to Tariff Water – Pa. PUC No. 4, as filed.

3. That Audubon Water Company be permitted to increase annual operating revenues in the total amount of \$703,000 consistent with the manner described and the rates, rules and regulations set forth in Appendix B (proof of revenue) in the Joint Petition for Partial Settlement.

4. That Audubon Water Company be authorized to file tariffs, tariff supplements and/or tariff revisions, on at least one day's notice, and pursuant to the provisions of 52 Pa.Code §§ 53.1 *et seq.*, and 53.101, designed to increase annual rate revenue as follows: (1) no earlier than April 19, 2021, upon at least one day's notice the Company will be permitted to implement a \$503,000 increase and (2) an additional \$200,000 increase effective on April 19, 2022.

5. That Audubon Water Company be ordered to comply with the provisions of the Joint Petition for Settlement filed in this matter.

6. That the Isolation Valves report to be submitted to the Commission in accordance with Joint Petition ¶ 23 include the Docket Number of this matter and be directed to the Bureau of Technical Utility Services.

7. That upon acceptance and approval by the Commission of the tariff supplements filed by Audubon Water Company, the investigation at Docket R-2020-3020919 be marked closed.

8. That the Formal Complaint filed by Dennis Zajac in this proceeding at Docket Number C-2020-3021410 be dismissed and marked closed.

9. That the Formal Complaint filed by the Office of Consumer Advocate in this proceeding at Docket Number C-2020-3021396 be closed as satisfied.

10. That the Formal Complaint filed by the Office of Small Business Advocate in this proceeding at Docket Number C-2020-3021579 be closed as satisfied.

11. That the Formal Complaint filed by Lower Providence Township in this proceeding at Docket Number C-2020-3021993 be dismissed and closed as satisfied.

12. That the Formal Complaint filed by Steven and Alina Burda in this proceeding at Docket Number C-2020-3022127 be dismissed and marked closed.

Date: February 11, 2021

/s/
Darlene Davis Heep
Administrative Law Judge