

February 24, 2021

Via Electronic Filing

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

In re: Docket No. R-2020-3020256, *et al.*
Pa. P.U.C., *et al.* v. The City of Bethlehem – Water Department

Dear Secretary Chiavetta:

We are counsel to the City of Bethlehem – Water Department in the above matter and are submitting, via electronic filing with this letter, the City's Exceptions to the Recommended Decision of Administrative Law Judge Haas. Copies of the Exceptions are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (via email, w/encl.)
The Honorable Steven K. Haas, Administrative Law Judge (via email, w/encl.)
ra-OSA@pa.gov (w/encl.)
Edward J. Boscola, P.E. (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Steven K. Haas, Presiding**

Pennsylvania Public Utility Commission	:	R-2020-3020256
Office of Small Business Advocate	:	C-2020-3021576
Office of Consumer Advocate	:	C-2020-3021583
	:	
v.	:	
	:	
City of Bethlehem – Water Department	:	
	:	

**EXCEPTIONS OF THE CITY OF BETHLEHEM TO THE RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE HAAS**

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DATED: February 24, 2021

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I. INTRODUCTION

This proceeding concerns the City of Bethlehem – Water Department’s (“City”) Supplement No. 15 to Tariff Water – Pa. P.U.C. No. 6 proposing an annual increase of \$908,421 in water service revenue for Outside City Customers based on a future test year ending December 31, 2020.

By Recommended Decision dated February 11, 2021, Administrative Law Judge Haas recommended that the Public Utility Commission (“Commission”) approve, *without modification*, a Joint Petition for Approval of Partial Settlement of Rate Investigation (“Joint Petition” or “Partial Settlement”) between the City and the Commission’s Bureau of Investigation and Enforcement (“I&E”).

The Joint Petition provides for a settlement increase of \$689,932, in lieu of the originally proposed increase of \$908,421, in annual revenue for Outside City Service. The City supports the Recommended Decision and Judge Haas’ recommended approval of the Partial Settlement.

The Office of Consumer (“OCA”) and the Office of Small Business Advocate (“OSBA”) did not participate in the Joint Petition and, instead, continued to litigate the rate proceeding presenting adjustments to the City’s ratemaking claims.

While recommending approval of the Partial Settlement, Judge Haas also addressed the OCA and OSBA proposed ratemaking adjustments but did so *only* in the event that the Commission wants to look past the Joint Petition and consider the adjustments proposed by OCA and OSBA.¹

¹ See Recommended Decision at 1. Thus, and in other words, if the Commission adopts the Recommended Decision and approves the Joint Petition, *without modification*, which the City submits it is reasonable and appropriate that the Commission do, further discussion of the ratemaking adjustments proposed by OCA and OSBA is not necessary.

The City submits these Exceptions to the ratemaking adjustments recommended for approval by Judge Haas if the Commission determines that adjustments to the City's ratemaking claims should be considered.²

II. EXCEPTIONS

EXCEPTION NO. 1 – RATE BASE – FIRE PUMP STATION

The City excepts to the contingent recommendation that the Commission adopt an adjustment proposed by the OCA and reject the City's claim for inclusion of the Fire Pump Station in rate base. Recommended Decision, Section V.B.2. City Main Brief, Section V.B.2, and Reply Brief, Section V.A.2.

Judge Haas explains that, in reaching the Settlement, I&E and the City did not agree to any individual plant in service claim and that, as such, no adjustment to plant in service is recommended. However, if the Commission determines that adjustments to the plant in service claim are necessary, Judge Haas recommends that the Commission accept the OCA's argument to exclude the Fire Pump Station from rate base. He concludes that the City did not provide sufficient evidence to indicate an operational date for the Station.

The rate base claim for the Fire Pump Station included the initial engineering work and, thereafter, the construction of the facility.³ The Pump Station is a necessary system improvement project for the City to continue to provide reasonable and adequate water service to customers in higher elevations.⁴

The City has taken physical delivery of many of the needed valves and pumps related to the Fire Pump Station. Those valves and pumps were ready to be installed as of the end of

² Pursuant to 52 Pa. Code Section 5.533, the City will incorporate into its Exceptions, by reference and citation, relevant pages of its previously filed Main and Reply Briefs.

³ The total project cost for the Fire Pump Station is \$758,000. The allocated value for Outside City Service is \$303,806 using an allocation factor of 40.08% from City Exhibit CEH-2R, Schedule E-R, Factor 4, page 5 of 23, Column 9.

October.⁵ Completion of the Station will occur in short order once the remaining component parts have been received. Delivery of the remaining parts has been delayed only because of COVID circumstances.⁶

The City's rate base claim for the Fire Pump Station is reasonable and appropriate. As presented in the City's Main and Reply Briefs, the City's claim is supported by the evidence of record and the Commission's reasoning and decision in *Pa. P.U.C. v. Pennsylvania-American Water Company*, 68 Pa. P.U.C. 343, 351-352 (1988) where, as Judge Haas notes, the Commission explained that it has "the discretion to allow in rate base expenses six months after the end of the test year."

The analysis in the Pennsylvania-American proceeding supports the City's claim here where the Fire Pump Station will be operating and in service shortly after the end of the future test year and is essential for continued service. If the Commission determines that adjustments to the City's plant in service claim should be considered (and the City agrees with Judge Haas that adjustments should not be considered) then the Commission should accept the City's claim for the Fire Pump Station and deny the adjustment proposed by the OCA.

The City's Exception No. 1 should be granted.

EXCEPTION NO. 2 - RATE BASE – CASH WORKING CAPITAL (“CWC”)

The City excepts to the contingent recommendation that the Commission adjust the City's cash working capital claim as a result of contingent recommended adjustments to expenses. Recommended Decision, Section V.C. City Main Brief, Section V.C, and Reply Brief, Section V.B.

Judge Haas explains that, in reaching the Settlement, I&E and the City did not agree to a

⁴ City of Bethlehem St. No. 3R at 4.

⁵ City of Bethlehem St. No. 3RJ at 2.

CWC claim and that, as such, no adjustment to CWC is recommended. However, if the Commission determines that an adjustment to the CWC claim is necessary, Judge Haas recommends that the Commission adjust the CWC claim for adjustments to finally determined operation and maintenance (“O&M”) expenses.

The City submits that its claim for O&M expenses is just and reasonable and supported by the evidence of record. Accordingly, if the Commission determines that adjustments to the City’s O&M expenses should be considered (and the City agrees with Judge Haas that adjustments should not be considered) then the Commission should accept the City’s claim for O&M expenses and the related claim for CWC.

The City’s Exception No. 2 should be granted.

EXCEPTION NO. 3 - EXPENSES – RATE CASE EXPENSE – NORMALIZATION PERIOD

The City excepts to the contingent recommendation that the Commission normalize rate case expense over a 52-month period as proposed by the OCA in lieu of the 36-month period proposed by the City. Recommended Decision, Section VII.A.2. City Main Brief, Section VII.A.2, and Reply Brief, Section VII.A.1.

Judge Haas explains that, in reaching the Settlement, I&E and the City did not agree to any individual expense claim and that, as such no adjustment to rate case expense is recommended. However, if the Commission determines that adjustments to individual expense claims are necessary, Judge Haas recommends that the Commission accept the OCA’s argument to normalize rate case expense over a 52-month period instead of the 36-month period proposed by the City.⁷ He concludes that the City did not support, with evidence, its argument that it will

⁶ City of Bethlehem St. No. 3RJ at 2.

⁷ The City claimed annual rate case expense of \$138,187 based on a three-year normalization of total rate case expense of \$414,560. Increasing the normalization period to 52 months as proposed by the OCA decreases the annual expense by \$42,519.

file another rate case within the next three years.

The City's claim for rate case expense is based on a three-year (36 month) normalization period. The OCA proposed to increase the normalization period to 52 months based on the average duration between the City's prior three rate cases. The City explained in its Main and Reply Briefs why the recent period of extended intervals between rate cases was abnormal for the City and should not be the basis for determining the appropriate normalization period. Rate case intervals prior to 2007 would have supported a normalization period of two years or 24 months. The City, however, presented its claim on a more extended 3 year or 36-month period.

The City emphasizes here, as it did in its Main and Reply Briefs, that, while rate case expense is normalized for recovery over a number of months, the actual cash outlay occurs in real time while the rate case is pending. This difference in timing creates a cash shortfall in relation to the expense. Extending the normalization period to 52-months would exacerbate the effect of the shortfall by also placing the City at risk for under recovery if the rate case interval ends up being shorter than the assumed normalization period.

If the Commission determines that adjustments to the City's individual expense claims should be considered (and the City agrees with Judge Haas that adjustments should not be considered) then the Commission should accept the City's proposed 36-month normalization period as a reasonable projection of rate case intervals based on intervals going back in time and reject the 52-month period proposed by the OCA.

The City's Exception No. 3 should be granted.

EXCEPTION NO. 4 -

**EXPENSES – EAST ALLEN TOWNSHIP EQUIPMENT
MAINTENANCE EXPENSE – NORMALIZATION PERIOD**

The City excepts to the contingent recommendation that the Commission normalize East Allen Township equipment maintenance expense based on a three-year average as proposed by the OCA in lieu of the City's claim based on the actual level of expense incurred in 2019. Recommended Decision, Section VII.A.6. City Main Brief, Section VII.A.6, and Reply Brief, Section VII.A.4.

Judge Haas explains that, in reaching the Settlement, I&E and the City did not agree to any individual expense claim and that, as such no adjustment to the East Allen Township equipment maintenance expense is recommended. However, if the Commission determines that adjustments to individual expense claims are necessary, Judge Haas recommends that the Commission accept the OCA's argument to normalize the expense based on a three-year average 2017 – 2019. The City based its claim on the actual expense incurred in 2019.⁸ Judge Haas concludes that the City did not present sufficient evidence to support the claim that the expense incurred in 2019 would be the level of expense going forward.

The equipment maintenance expense incurred in 2019 was the result of emergency repairs. While the incurred expense is higher than the previous two years, the City experiences emergency equipment repairs every year in order to operate and maintain an aging plant and infrastructure and meet all regulatory requirements. The level of incurred expense in 2019 was reasonably incurred and should be accepted as the reasonable and appropriate level of the expense going forward.

If the Commission determines that adjustments to the City's individual expense claims should be considered (and the City agrees with Judge Haas that adjustments should not be

⁸ The City's claim for East Allen Township equipment maintenance expense is \$34,605 based on the expense actually incurred during 2019. The OCA's proposed adjustment based on a three-year normalization reduces the City's claim by \$6,586.

considered) then the Commission should accept the City's claim for East Allen Township equipment maintenance expense based on the level of expense actually incurred during 2019 and reject the three year normalization proposed by the OCA.

The City's Exception No. 4 should be granted.

EXCEPTION NO. 5 - EXPENSES – WATER FILTRATION EQUIPMENT MAINTENANCE EXPENSE – NORMALIZATION PERIOD

The City excepts to the contingent recommendation that the Commission normalize water filtration equipment maintenance expense based on a three-year average as proposed by the OCA in lieu of the City's claim based on the actual level of expense incurred in 2019. Recommended Decision, Section VII.A.7. City Main Brief, Section VII.A.7.c, and Reply Brief, Section VII.A.5.

Judge Haas explains that, in reaching the Settlement, I&E and the City did not agree to any individual expense claim and that, as such no adjustment to water filtration equipment maintenance expense is recommended. However, if the Commission determines that adjustments to individual expense claims are necessary, Judge Haas recommends that the Commission accept the OCA's argument to normalize the expense based on a three-year average 2017 – 2019. The City based its claim on the actual expense incurred in 2019.⁹ Judge Haas concludes that the City did not present sufficient evidence to support the claim that the expense incurred in 2019 is representative of the level of expense going forward.

The equipment maintenance expense incurred in 2019 was due to necessary and emergency repairs. While the incurred expense is higher than the previous two years, the City experiences necessary and emergency equipment repairs every year in order to operate and maintain an aging plant and infrastructure and meet all regulatory requirements. The level of

⁹ The City's claim for water filtration equipment maintenance expense is \$30,174 based on the expense actually incurred during 2019. The OCA's adjustment based on a three-year normalization reduces the City's claim by \$8,661.

incurred expense in 2019 was reasonably incurred and should be accepted as the reasonable and appropriate level of the expense going forward.

If the Commission determines that adjustments to the City's individual expense claims should be considered (and the City agrees with Judge Haas that adjustments should not be considered) then the Commission should accept the City's claim for water filtration equipment maintenance expense based on the level of expense actually incurred during 2019 and reject the three year normalization proposed by the OCA.

The City's Exception No. 5 should be granted.

EXCEPTION NO. 6 – EXPENSES – DEPRECIATION EXPENSE

The City excepts to the contingent recommendation that the Commission adjust the City's claim for depreciation expense as a result of the contingent recommended exclusion of the Fire Pump Station from rate base. Recommended Decision, Section VII.B, City Main Brief, Section VII.B, and Reply Brief, Section VII.B.

Judge Haas explains that, in reaching the Settlement, I&E and the City did not agree to any individual expense claim and that, as such, no adjustment to depreciation expense is recommended. However, if the Commission determines that adjustments to individual expense claims are necessary, Judge Haas recommends that the Commission adjust the depreciation expense claim for removal of the Fire Pump Station from rate base.

The City submits that its claim for depreciation expense is just and reasonable and supported by the evidence of record. Accordingly, if the Commission determines that adjustments to the City's rate base claim should be considered (and the City agrees with Judge Haas that adjustments should not be considered) then the Commission should accept the City's rate base claim for the Fire Pump Station and the related claim for depreciation expense.


The City's Exception No. 6 should be granted.

III. CONCLUSION

The Commission encourages settlement and the City submits that the Commission should adopt the Recommended Decision and approve the Joint Petition for Approval of Partial Settlement of Rate Investigation, *without modification*. The rates proposed in the Joint Petition are just and reasonable and consistent with Section 1301 of the Code. The Joint Petition provides for an increase in annual revenue for Outside City Service of \$689,932 in lieu of the originally proposed increase of \$908,421.

If the Commission determines that adjustments to the City's ratemaking claims should be considered (and the City agrees with Judge Haas that adjustments should not be considered) then the Commission should accept the City's claims and reject those adjustments proposed by the OCA and recommended for approval in the Recommended Decision as presented in the foregoing Exceptions.

Respectfully submitted,

By 

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Attorneys for the City of Bethlehem

DATED: February 24, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3020256
Office of Small Business Advocate	:	C-2020-3021576
Office of Consumer Advocate	:	C-2020-3021583
	:	
v.	:	
	:	
City of Bethlehem – Water Department	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February 2021, served a true and correct copy of the foregoing Exceptions of the City of Bethlehem to the Recommended Decision of Administrative Law Judge Haas, upon the persons and in the manner indicated below:

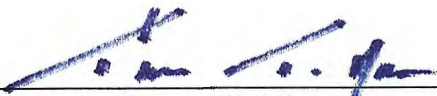
VIA ELECTRONIC MAIL

The Honorable Steven K. Haas
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