



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 2, 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 Exceptions

Dear Secretary Chiavetta:

Enclosed please find the **Reply Exceptions of the Bureau of Investigation and Enforcement** (I&E) in the above-referenced proceeding.

Copies are being served on parties of record per 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
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JMC/ac
Enclosures

cc: Honorable Steven K. Haas – Office of Administrative Law Judge (*via email*)
Office of Special Assistants (*via email* – RA-OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3020256
	:	
City of Bethlehem – Water Department	:	

**REPLY EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

John M. Coogan
Prosecutor
PA Attorney ID No. 313920

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

Dated: March 2, 2021

TABLE OF CONTENTS

I. INTRODUCTION 1

 A. Procedural Background 1

 B. Summary of I&E Reply Exceptions 3

II. I&E REPLY EXCEPTIONS 4

 A. I&E Reply to OCA Exception No. 1: The ALJ Properly Recommended
 Approval of the Rate Increase Contained in the Partial Settlement 4

III. CONCLUSION 8

TABLE OF CITATIONS

Cases

<i>Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia</i> , 262 U.S. 679 (1923).....	5, 6, 7
<i>Federal Power Commission v. Hope Natural Gas Co.</i> , 320 U.S. 591 (1944).....	6, 7
<i>Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.</i> , Docket No. R-2020-3018835 (Opinion and Order entered February 19, 2021)	7
<i>Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company</i> , Docket Nos. R-2020-3019369 and R-2020-3019371 (Opinion and Order entered February 25, 2021).....	7

Statutes

66 Pa. C.S. §1308(d).....	1
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Regulations

52 Pa. Code § 5.231	2
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I. INTRODUCTION

On February 11, 2021, Administrative Law Judge Steven K. Haas (“ALJ”) issued a Recommended Decision in the above-captioned proceeding (“Recommended Decision”). On February 24, 2021, the City of Bethlehem (“City”) and the Office of Consumer Advocate (“OCA”) filed Exceptions to the ALJ’s Recommended Decision. In response to the OCA’s Exceptions, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files these Reply Exceptions, opposing the OCA’s Exception No. 1. For the reasons fully explained below, I&E respectfully requests the Commission deny this Exception.

A. Procedural Background

On July 31, 2020, the City filed Supplement No. 15 to its Tariff Water-Pa. P.U.C. No. 15 to become effective September 29, 2020. The City requested an overall increase to its total annual operating revenues for water service by \$908,421 (10.9%). I&E entered its appearance on August 14, 2020. The OCA filed a Notice of Appearance and Formal Complaint on August 27, 2020. The Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance and Formal Complaint on August 27, 2020. By Order entered September 17, 2020, the Commission instituted a formal investigation to determine the lawfulness, justness, and reasonableness of the existing and proposed rates, rules, and regulations. Pursuant to 66 Pa. C.S. §1308(d), the filings were suspended by operation of law until April 29, 2021, unless permitted by Commission Order to become effective at an earlier date. On September 23, 2020, the City declined mediation and filed a tariff suspension, suspending its proposed tariff to April 29, 2021.

The ALJ held a prehearing conference on October 8, 2020 during which the parties agreed to a procedural schedule, including the service of testimony among the parties and the dates for evidentiary hearings. In accordance with the procedural schedule established at the prehearing conference, I&E served all active parties the following pieces of testimony and accompanying exhibits:

I&E Witness Brenton Grab	Operating and Maintenance Expenses
Direct Testimony	1. I&E Statement No. 1 2. I&E Exhibit No. 1
Surrebuttal Testimony	1. I&E Statement No. 1-SR 2. I&E Exhibit No. 1-SR
I&E Witness Anthony Spadaccio	Rate of Return
Direct Testimony	1. I&E Statement No. 2 2. I&E Exhibit No. 2
Surrebuttal Testimony	1. I&E Statement No. 2-SR
I&E Witness Esyan Sakaya	Rate Base/Revenue Allocation/UFW
Direct Testimony	1. I&E Statement No. 3 2. I&E Exhibit No. 3
Surrebuttal Testimony	1. I&E Statement No. 3-SR 2. I&E Exhibit No. 3-SR

In accordance with Commission policy favoring settlements at 52 Pa. Code § 5.231, I&E participated in multiple settlement discussions with parties to the proceeding. Following extensive settlement negotiations, and before hearings began, I&E reached a partial settlement with the City.

The ALJ presided over an evidentiary hearing on December 17, 2020. At the evidentiary hearing, the ALJ set forth the following due dates: Petitions for Settlement

and Main Briefs were due December 28, 2020; Reply Briefs and Comments on Petitions for Settlement were due January 8, 2021; and Reply Comments on Petitions for Settlement were due January 12, 2021. On December 28, 2020, the City and I&E filed a Joint Petition for Approval of Partial Settlement of Rate Investigation (“Joint Petition” or “Partial Settlement”). The City, the OCA, and the OSBA filed their Main Briefs and Reply Briefs on December 28, 2020 and January 8, 2021, respectively. The OCA filed Comments opposing the Partial Settlement within its Reply Brief.¹ I&E and the City filed Reply Comments on January 12, 2021. On February 11, 2021, the ALJ issued a Recommended Decision approving the Partial Settlement without modification.² On February 24, 2021, the City and the OCA filed Exceptions to the ALJ’s Recommended Decision. Pursuant to the Secretarial Letter issued on February 11, 2021, I&E files these timely Reply Exceptions.

B. Summary of I&E Reply Exceptions

As documented in the Joint Petition, I&E and the City provided extensive testimony to support approval of the Partial Settlement, including a rate increase of \$689,932. Therefore, the ALJ properly recommended approval of the rate increase contained in the Partial Settlement. Additionally, the Commission has recently rejected the OCA’s no rate increase position in other proceedings and affirmed the Commission’s reliance on traditional ratemaking principles. Therefore, the Commission should reject OCA’s Exception No. 1 and approve the ALJ’s Recommended Decision.

¹ The OSBA did not file Comments or specifically mention the Partial Settlement in its Reply Brief filed on January 8, 2021.

² On February 23, 2021, the ALJ issued an errata, noting the record had closed on January 12, 2021, not January 8, 2021, as the initial Recommended Decision stated.

II. I&E REPLY EXCEPTIONS

A. I&E Reply to OCA Exception No. 1: The ALJ Properly Recommended Approval of the Rate Increase Contained in the Partial Settlement

The OCA excepts to the ALJ's recommendation that the Partial Settlement be approved because the OCA believes that, because of the COVID-19 pandemic, the City of Bethlehem should be awarded no rate increase.³ OCA mainly reiterates its arguments from testimony and briefs. First, the OCA claims the ALJ did not give proper weight to ratepayer concerns related to the COVID-19 pandemic.⁴ Second, the OCA claims that, without a rate increase, the City would still have enough revenue to provide safe and reliable service.⁵ Third, the OCA claims a "business as usual" approach is contrary to law and the Commission has the legal authority to reject a rate increase.⁶ Fourth, the OCA claims the City's FTY projections are unreliable, and therefore a rate increase must be rejected.⁷ Last, the OCA claims the record does not support a \$689,932 increase.⁸

I&E asserts the ALJ properly considered and rejected the OCA's position that no rate increase is appropriate.⁹ Although I&E's analysis in this proceeding recommended numerous reductions to the City's revenue claim, I&E's position, as supported by I&E testimony, is that it is appropriate for the City to receive a rate increase of \$689,932. The OCA acknowledges that its own witness recognized a revenue deficiency of \$443,666 under traditional ratemaking.¹⁰ Although OCA claims a rate increase of \$689,932 is

³ OCA Exceptions, pp. 1-2.

⁴ OCA Exceptions, pp. 3-11, 16-17.

⁵ OCA Exceptions, pp. 2, 11-12, 23-25.

⁶ OCA Exceptions, pp. 4, 12-16, 19-23.

⁷ OCA Exceptions, pp. 18-19.

⁸ OCA Exceptions, p. 26.

⁹ See Recommended Decision, pp. 16-20.

¹⁰ OCA Exceptions, p. 11.

unsupported, the City's rate increase claim was for \$908,421, and it is unrealistic to expect a party will win all their positions through litigation. Therefore, a settlement amount approximately halfway between revenue requirement positions is a reasonable compromise.

OCA claims its position is supported by legal precedent.¹¹ To the contrary, I&E avers OCA's position contradicts bedrock constitutional principles of ratemaking that a utility is entitled to a return comparable to the return earned by similar enterprises. Specifically, in *Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia*,¹² 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.¹³

¹¹ OCA Exceptions, pp. 4, 12-16, 19-23.

¹² 262 U.S. 679 (1923) ("*Bluefield*").

¹³ *Bluefield* at 692-93.

The U.S. Supreme Court affirmed these principles in *Federal Power Commission v.*

Hope Natural Gas Co.,¹⁴ 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 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.¹⁵

I&E was mindful of both *Bluefield* and *Hope Natural Gas* 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 of 6.75% using the Discounted Cash Flow (“DCF”) methodology frequently used by the Commission.¹⁶ Consistent with *Bluefield* and *Hope Natural Gas*, 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. OCA avers the City’s existing rates are adequate because they produce an overall rate of return of 5.65%.¹⁷ However, OCA’s market analysis reflects a rate of return of 6.57%.¹⁸ Although the settlement revenue requirement does not entirely reflect I&E’s analysis, as stated above, it is a reasonable compromise between positions.

¹⁴ 320 U.S. 591 (1944) (“*Hope Natural Gas*”).

¹⁵ *Hope Natural Gas* at 603.

¹⁶ I&E St. No. 1; I&E Ex. No. 1.

¹⁷ OCA Exceptions, p. 24.

¹⁸ OCA Exceptions, p. 24.

The ALJ also commented that the OCA’s no rate increase position has been raised in several recent rate case proceedings, but there has not yet been a definitive Commission pronouncement on the impact of the COVID-19 pandemic on rate increase requests.¹⁹ However, since the Recommended Decision was issued, the Commission has issued two decisions considering a similar OCA position and the Commission has rejected the OCA’s position in both cases. First, in *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*,²⁰ the Commission rejected the OCA’s no rate increase position and confirmed reliance on traditional ratemaking methodologies as established in *Bluefield* and *Hope Natural Gas*. Further, the Commission noted it had approved other rate increases during the COVID-19 pandemic, and to deny a rate increase outright would be inconsistent with these prior decisions.²¹ The Commission also rejected “broad brush” arguments that FPPTY projections are unreliable and rate of return positions unsupported by market-based equity cost analyses, which are similar to the arguments made by the OCA in this proceeding.²² Similarly, in *Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company*,²³ the Commission rejected the OCA’s no rate increase position, again confirming traditional ratemaking principles during the COVID-19 pandemic.²⁴ The Commission has now clearly ruled on the OCA’s no rate increase position and, for similar reasons in this proceeding, the Commission should reject the OCA’s Exception No. 1.

¹⁹ Recommended Decision, p. 20.

²⁰ Docket No. R-2020-3018835 (Opinion and Order entered February 19, 2021) (“Columbia Order”).

²¹ Columbia Order, p. 52.

²² Columbia Order, pp. 52, 54.

²³ Docket Nos. R-2020-3019369 and R-2020-3019371 (Opinion and Order entered February 25, 2021) (“PAWC Order”).

²⁴ PAWC Order, pp. 44-46.

III. CONCLUSION

For the reasons discussed above, I&E respectfully requests the Commission reject the Office of Consumer Advocate's Exception No. 1 and approve the ALJ's Recommended Decision.

Respectfully submitted,

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

John M. Coogan
Prosecutor
PA Attorney ID No. 313920

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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Dated: March 2, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
v. : Docket No.: R-2020-3020256
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 Exceptions** dated March 2, 2021, in the manner and upon the persons listed below:

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