


COMMONWEALTH OF PENNSYLVANIA



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March 2, 2021

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
Docket No. R-2020-3020256

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate’s Reply Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Very truly yours,

/s/ Christine Maloni Hoover
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Senior Assistant Consumer Advocate
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Enclosures:

cc: The Honorable Steven K. Haas (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*304488

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of March 2021.

SERVICE BY E-MAIL ONLY

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Dated: March 2, 2021
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

Administrative Law Judge Steven K. Haas issued a Recommended Decision in the City of Bethlehem – Water Department (City or Bethlehem) base rate case on February 11, 2021. ALJ Haas recommended adoption of the Joint Petition for Approval of Partial Settlement of Rate Investigation (Settlement or Partial Settlement), rejecting the OCA’s primary position that no increase should be approved for the City due to the impacts of the COVID-19 pandemic. He also addressed the OCA’s adjustments to the City’s claims as set forth in its filing. The Office of Consumer Advocate (OCA) filed Exceptions addressing various aspects of the ALJs’ R.D. on February 24, 2021. The City also filed Exceptions on that date. In these Reply Exceptions, the OCA addresses the City’s Exceptions.

The OCA maintains its primary position that it would not be just or reasonable to impose a rate increase on customers at this time due to the COVID-19 pandemic devastating the health and economy of the Commonwealth. OCA M.B. at 8; OCA R.B. at 11–13; OCA Exc. at 26. However, if the OCA’s primary position is not adopted, the Commission should not approve the Partial Settlement because the level of the rate increase and the lack of other provisions that have been raised in this proceeding are fatal flaws that render the Partial Settlement not in the public interest. Id. The OCA maintains that if the Commission finds that some increase is necessary for the City, the revenue increase should be no more than \$443,666. Id.; see App. A.2, Tables I-VI.

For the reasons set forth below and in the OCA’s Exceptions, the Office of Consumer Advocate respectfully requests that the Commission deny the City’s Exceptions and grant the OCA’s Exceptions and Reply Exceptions.

II. REPLY EXCEPTIONS

Reply to City Exception #1: Judge Haas did not err in recommending that if the settlement is not adopted, the Fire Pump Station should be removed from rate base. R.D. at 26; City Exc. at 2–3; ~~City M.B. at 17–18~~; OCA M.B. at 26–28; OCA R.B. at 17–19.

In his Recommended Decision, Judge Haas found that if the settlement is not adopted, the Fire Pump Station should be removed from rate base. R.D. at 26. Judge Haas reasoned that “the City [had] not provided sufficient evidence to indicate an operational date of the Fire Pump Station.” Id. Bethlehem opposed Judge Haas’ recommendation. City Exc. at 2. In its Exceptions, the City repeated its argument that the Fire Pump Station should be included in the plant in service figure because it is a necessary system improvement, and installation and construction will be completed once the City receives the remaining parts. City Exc. at 2–3. The City again cited Pennsylvania-American Water Co. for its argument that the Company in that case was allowed to claim projects that would be operating and in service shortly after the end of the future test year. Pa. P.U.C. v. Pennsylvania-American Water Company, 97 PUR4th 469 (1988). The City cited the COVID-19 pandemic as the reason why this project is not completed. City Exc. at 3.

The OCA submits that the ALJ correctly recommended that this claim be denied if the Settlement is not approved. The City has not provided sufficient evidence to indicate an operational date of the Fire Pump Station. The City has not provided any evidence as to when the Fire Pump Station will be in service. See City Exc. 2–3. Additionally, while the City cited to Pennsylvania-American Water Company, it failed to mention that in that case, “certain vital components” of the disputed project were going to be completed and in service as of the end of the future test year. Pennsylvania-American Water Company, 97 PUR4th at 469. In the present case, no “vital components” of the two disputed projects were completed and in service as of the end of the future test year (12/31/20). Further, the City’s rationale for including the Fire Pump

station in rate base is that the project would have been completed had it not been for the “COVID-19 circumstances.” City Exc. at 3. However, these circumstances are still an issue in 2021 and could continue to delay the completion of this capital project. OCA St. 2S at 8–10. Thus, considering the uncertainty that the COVID-19 pandemic continues to cast over different aspects of everyday life, it would be unreasonable to include the Fire Pump Station in the test year based on the City’s speculation as to when it will be complete and in service. Thus, the OCA submits that Judge Haas did not err in recommending that if the settlement is not adopted, the Fire Pump Station Engineering and Construction should be removed from rate base.

Reply to City Exception #2: Judge Haas did not err in finding that if the Commission determines that adjustments to the City's Operations and Maintenance (O&M) claim should be considered, an adjustment to the City's Cash Working Capital claim is required. R.D. at 26; City Exc. at 4; OCA M.B. at 29.

In the Recommended Decision, Judge Haas made the recommendation that if adjustments are made to the City’s O&M claims, an adjustment to the Cash Working Capital (CWC) claim is necessary. The Commission should “reduce or increase, as appropriate, the City’s CWC claim by the difference between the City’s CWC claim and 12.5% of total adjusted [Operations and Maintenance (O&M)] expenses, excluding bad debt expense.” R.D. at 26. The City opposed this recommendation and instead stated that “if the Commission determines that adjustments to the City's O&M expenses should be considered then the Commission should accept the City’s claim for O&M expenses and the related claim for CWC.” City Exc. at 4. However, the OCA agrees that the final CWC amount should be based on the final level of expenses. Thus, because the OCA recommends adjustments to O&M expenses, the OCA agrees with the ALJ’s recommendation that the Commission should determine the final CWC amount based on the final level of expenses.

Reply to City Exception #3: Judge Haas did not err in finding that if the Commission determines that adjustments to individual expense claims are necessary, the Commission should accept the OCA’s argument to normalize the rate case expense over a 52-month period. R.D. at 32–33; City Exc. at 4–5; OCA M.B. at 40–41.

Judge Haas found that if the Commission determines that adjustments to individual expense claims are necessary, the Commission should accept the OCA’s argument to normalize the rate case expense over a 52-month period. R.D. at 33. The Recommended Decision recognizes that while there are exceptions, “[i]t is the Commission’s practice to recognize all prudently incurred rate case expense and set a normalization period based upon historic filing frequency.” R.D. at 32 (citing City of Lancaster v. Pa. Pub. Util. Comm’n, 793 A.2d 978 (Pa. Cmwlth. 2002)). The City opposed the proposed adoption of the OCA’s recommended 52-month normalization period and instead argued that a 36-month normalization period should be adopted. City Exc. at 4. In its Exceptions, the City continues to argue that the period between the current and the last rate case, filed in 2013, was an abnormality and that cases prior to 2011 “would have supported” a shorter normalization period. City Exc. at 5.

The OCA submits that a three year normalization period would be contrary to Commission precedent. As discussed in the OCA’s Briefs, the Commission has consistently held that that rate case expenses are normal operating expenses, and normalization should, therefore, be based on the historical frequency of the utility’s rate filings. OCA M.B. at 40–41 (citing Popowsky v. Pa. P.U.C., 674 A.2d 1149, 1154 (Pa. Cmwlth. 1996); Pa. P.U.C. v. Columbia Water Co., 2009 Pa. PUC LEXIS 1423 (2009); City of Lancaster (Sewer Fund) v. Pa. P.U.C., 793 A.2d 979 (Pa. Cmwlth. 2002) (Lancaster 2002); Pa. P.U.C. v. Roaring Creek Water Co., 73 Pa. PUC 373, 400 (1990); Pa. P.U.C. v. West Penn Power Co., 119 PUR4th 110, 149 (1990)). In recent cases the Commission reiterated that the normalization period is determined, “by examining the utility’s

actual historical rate filings, not upon the utility’s intentions.” OCA M.B. at 40–41 (citing Pa. P.U.C. v. City of Dubois – Bureau of Water, Docket No. R-2016-2554150 slip op. at 65 (Order entered May 18, 2017) (City of Dubois)); Pa. P.U.C. v. City of Lancaster, 2011 Pa. PUC LEXIS 1685 (2011) (Lancaster 2011); Pa. P.U.C. v. Metropolitan Edison Co., 2007 Pa. PUC LEXIS 5 (2007)). Basing the normalization period on historical filing frequency is reasonable because it represents known and measurable data.

The City continues to speculate that going forward, it will be filing rate increase cases more frequently. City Exc. at 5. However, the City does not state how circumstances will not similarly keep it from filing rate increase cases more frequently than it has in the past. There are many reasons why a utility may not file rate cases as frequently as it may project. The City’s continued speculation as to the frequency of its rate cases going forward is contrary to Commission precedent that the normalization period is determined “by examining the utility’s actual historical rate filings, not upon the utility’s intentions.” Popowsky v. Pa. P.U.C., 674 A.2d 1149, 1154 (Pa. Cmwlth. 1996). Further, the City does not present a coherent argument as to why the rare exceptions to this general rule should apply to them. Thus, the OCA maintains its position that a 52-month normalization period should be applied in this case.

Reply to City Exception #4: Judge Haas did not err in recommending that if the settlement is not adopted, the Commission should normalize the East Allen Township equipment maintenance expense based on the OCA’s recommendation of a three-year average. R.D. at 38–39; City Exc. at 9; OCA M.B. at 34–36.

Judge Haas made the recommendation that, if the settlement is not adopted, the Commission should normalize the East Allen Township equipment maintenance expense based on a three-year average of this expense category. R.D. at 39. The City opposed Judge Haas’ recommendation and instead claimed that the expense should be solely based on the level of

expense incurred in 2019. City Exc. at 9. The City argued that “[t]he level of incurred expense in 2019 was reasonably incurred and should be accepted as the reasonable and appropriate level of the expense going forward.” Id. The Recommended Decision stated, in part, that:

The City did not present sufficient evidence for a finding to be made that the equipment maintenance expense incurred in 2019 will be level of the expense going forward. The equipment maintenance expense levels through 2017 – 2019 (\$4,048, \$11,648, and \$34,605) reveal that although the expense has been increasing each year, the expense incurred in 2019 is an irregularity. The City attributed the 2019 expense to the need to perform emergency repairs on an aging infrastructure and claimed that it will experience emergency repairs every year, but did not explain why repairs would remain at the level they were in 2019. The expense figure for the FTY should be calculated through normalizing the past three years, as to smooth out the effect of the irregular 2019 equipment maintenance expense and to prevent overcollection with respect to this expense.

R.D. at 38.

The OCA used the actual expense levels from 2017, 2018, and 2019 to determine a normalized level of expense to account for fluctuations and one-time expenses in equipment maintenance expense. OCA St. 2S at 6. In the current proceeding, the evidence showed that the types of equipment repairs vary annually, as well as the expenses incurred. OCA St. 2S at 5–6. This annual cost variance is reflected in the 2017-2019 equipment maintenance expenses (\$4,048 in 2017; \$11,648 in 2018; and \$34,605 in 2019). OCA St. 2S at 5–6. Therefore, it is unreasonable to expect that the annual equipment maintenance expense will remain at the 2019 levels given the historical expenses in prior years. OCA St. 2S at 5–6. Thus, the OCA submits that Judge Haas’s recommended adoption of the OCA’s adjustment is reasonable and appropriate because it reflects that the actual expense levels from 2017, 2018, and 2019 should be used and normalized to account for fluctuations and one-time expenses.

Reply to City Exception #5: Judge Haas did not err in recommending that if the settlement is not adopted, the Commission should normalize the Water Filtration Equipment Maintenance expense based on a three-year average, as proposed by the OCA. R.D. 40–41; City Exc. at 7; OCA M.B. at 36–38.

In the Recommended Decision, Judge Haas made the recommendation that if the settlement is not adopted, the Commission should normalize the Water Filtration Equipment Maintenance expense based on a three-year average, as proposed by the OCA. R.D. 40–41. The City opposed this recommendation and instead argued that the level of expenses incurred in 2019 should be used instead. City Exc. at 7. The City reasoned that “[w]hile 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.” Id. However, Judge Haas found that “[t]he City did not provide sufficient evidence” to prove that all of the expenses associated with the Water Filtration Equipment Maintenance expense are normally occurring prudent expenses. R.D. at 41. Instead, the City admitted in its response to I&E’s interrogatories that one of these expenses “contains fluctuating expenses.” Id.

Judge Haas’ determination is consistent with the evidence in this case. The City fails to articulate why, if “necessary and emergency repairs” occur every year in differing amounts, normalizing the expense is not proper. See City Exc. at 7. Thus, the OCA’s adjustment, as recommended by Judge Haas, is reasonable and appropriate and he did not err when he made the recommendation that if the settlement is not adopted, the Commission should normalize the Water Filtration Equipment Maintenance expense based on a three-year average.

Reply to City Exception #6: Judge Haas did not err in recommending that if the settlement is not adopted, the Commission should adjust the City's claim for depreciation expense as a result of the recommendation of the exclusion of the Fire Pump Station from rate base. R.D. at 45–46; City Exc. at 8; OCA M.B. at 41.

Judge Haas made the recommendation that if the settlement is not adopted, the Commission should adjust the City's claim for depreciation expense as a result of the recommendation of the exclusion of the Fire Pump Station from rate base. R.D. at 45–46. The City opposed this recommendation. City Exc. at 8. However, the OCA agrees with Judge Haas' determination as it is appropriate considering Judge Haas' recommendation to adopt the OCA's adjustment to exclude the Fire Pump Station from rate base, as discussed in Reply to City Exception No. 1.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, the OCA respectfully requests that the Commission grant the OCA's Exceptions and Reply Exceptions and adopt the OCA's positions as discussed above.

Respectfully Submitted,

/s/ Luis M. Melendez

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