**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |  |
| --- | --- |
| Pennsylvania Public Utility Commission  v.  Community Utilities of Pennsylvania Inc. | R-2021-3025206  C-2021-3025263 |

|  |  |
| --- | --- |
| Pennsylvania Public Utility Commission  v.  Community Utilities of Pennsylvania Inc. – Wastewater Division | R-2021-3025207  C-2021-3025260 |

**ORDER CONSOLIDATING PROCEEDINGS**

This Order is issued pursuant to the authority given to Administrative Law Judges under the Commission’s regulations at 52 Pa. Code § 5.483 and 52 Pa. Code § 5.81(a). The consolidation of these cases is for the purpose of efficient case resolution and for administrative efficiency and is in the public interest.

On April 12, 2021, Community Utilities of Pennsylvania Inc. (CUPA) filed Supplement No. 9 to Tariff Water-Pa. P.U.C. No. 1 (Supplement No. 9) to become effective June 12, 2021. Supplement No. 9 would increase CUPA’s total annual operating revenues for water service by approximately $757,517, or 36.6%.

On April 15, 2021, the Office of Small Business Advocate (OSBA) filed a Formal Complaint with respect to the rate request at Docket No. C-2021-3025263.

At its public meeting on May 6, 2021, the Commission ordered, pursuant to 66 Pa.C.S. § 1308(d), that the rate filing be suspended by operation of law until January 12, 2022, unless permitted by Commission Order to become effective at an earlier date.

On April 12, 2021, Community Utilities of Pennsylvania Inc. – Wastewater Division (CUPA-WD) filed Supplement No. 7 to Tariff Wastewater-Pa. P.U.C. No. 1 (Supplement No. 7) to become effective June 12, 2021 unless permitted by Commission Order to become effective at an earlier date. Supplement No. 7 would increase CUPA-WD’s total annual operating revenues for wastewater service by approximately $998,705, or 37.4%.

On April 15, 2021, the OSBA filed a Formal Complaint with respect to the rate request at Docket No. C-2021-3025260.

At its public meeting on May 6, 2021, the Commission ordered, pursuant to 66 Pa.C.S. § 1308(d), that the rate filing be suspended by operation of law until January 12, 2022, unless permitted by Commission Order to become effective at an earlier date.

On May 13, 2021, a telephonic prehearing conference was held at which time counsel for the parties (CUPA and CUPA WD, the OSBA, the Office of Consumer Advocate, and the Commission’s Bureau of Investigation and Enforcement) requested consolidation of these proceedings.[[1]](#footnote-1) This Order formalizes my agreement on that date that the cases be consolidated.

The Commission’s regulation pertaining to consolidation appears at 52 Pa. Code

§ 5.81, and states in relevant part:

**§ 5.81. Consolidation**

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

52 Pa. Code § 5.81(a).

The question of consolidation is clearly left to the sound discretion of the Commission or the presiding officer.

Cases have been consolidated for adjudication; *Re Middletown Taxi Co.*, 50 Pa. PUC 263 (1976), for hearing; *City of York v. York Telephone and Telegraph Co.*, 43 Pa. PUC 240 (1967), for briefing; *Clepper Farms, Inc. v. Grantham Water Co.*, 41 Pa. PUC 749 (1965), and have been refused consolidation for any purpose; *Dopp v. Williamsburg Borough Dep’t of Water and Sewer*, 59 Pa. PUC 25 (1984).

In considering the consolidation of cases, the first criteria (set forth in the Commission’s regulations) is that the proceedings must involve, “a common question of law or fact.” An examination of Commission precedent in such cases as *Applications of Philadelphia Electric Co.*, 43 Pa. PUC 781 (1968), *Pa. Public Utility Comm’n v. Bell Telephone Co. of Pennsylvania*, 46 Pa. PUC 568 (1973), and *Pa. Public Utility Comm’n v. Butler Twp. Water Co.*, 52 Pa. PUC 442 (1978), as well as those cited above, establishes that considerations in addition to the presence of common questions of law or fact must also be evaluated in ruling on a consolidation. These other considerations (and the answers thereto) are:

1. Will the presence of additional issues cloud a determination of the common issues? Answer: There is an identity of issues.

2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission? Answer: Yes.

3. Do issues in one proceeding go to the heart of an issue in the other proceeding? Answer: Yes.

4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record? Answer: No.

5. Will different statutory and legal issues be involved? Answer: No.

6. Does the party with the burden of proof differ in the proceedings? Answer: No.

7. Will consolidation unduly delay the resolution of one of the proceedings? Answer: No.

8. Will supporting data in both proceedings be repetitive? Answer: Not in any sense that would detract from the efficient resolution of the consolidated proceeding.

No single consideration, nor group of these considerations, is dispositive of a consolidation, any more so than the presence of a common question of law or fact. Rather, the evaluation of all of them and a balancing of those favoring and disfavoring consolidation is required.

In the cases now before the Commission, the above-captioned proceedings are interrelated and raise common issues of law and fact.

Because the disposition of each of these matters is interrelated, the consolidation of these proceedings will promote the efficient use of the time and resources of the parties and the Commission. Consolidation of these cases will not unduly delay the resolution of either of them or the related Complaints. In sum, a consolidation for hearing, briefing, and adjudication of these cases is warranted and is in the public interest, the interest of the parties and the interest of the Commission.

**ORDER**

THEREFORE,

IT IS ORDERED:

1. That the above-captioned cases, bearing Docket Numbers R-2021-3025206 (Water), C-2021-3025263, and R-2021-3025207 (Wastewater), and C-2021-3025260, are consolidated for hearing and adjudication.

2. That the formal Complaints filed by Kerren Ricketts at Docket Numbers C-2021-3026118, and C-2021-3026119, are consolidated with these rate proceedings for hearing and adjudication.

Date: June 1, 2021 \_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis J. Buckley

Administrative Law Judge

**R-2021-3025206, et al. – PENNSYLVANIA PUBLIC UTILITY COMMISSION v. COMMUNITY UTILITIES OF PENNSYLVANIA, INC.**

*Revised: May 11, 2021*

THOMAS J. SNISCAK ESQUIRE  
WHITNEY E. SNYDER ESQUIRE  
BRYCE R. BEARD ESQUIREHAWKE MCKEON AND SNISCAK, LLP100 N TENTH STREETHARRISBURG PA 17101**717.236.1300**[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)[brbeard@hmslegal.com](mailto:brbeard@hmslegal.com)Accepts eService  
(*Representing Community Utilities of PA)*ERIN FURE ESQUIRE  
OFFICE OF SMALL BUSINESS ADVOCATEFORUM PLACE555 WALNUT STREET 1ST FLOORHARRISBURG PA 17101**717.783.2525**[efure@pa.gov](mailto:efure@pa.gov)“*Via e-mail only due to   
Emergency Order at M-2020-3019262”*

ALLISON C. KASTER ESQUIREPA PUC BIE LEGAL TECHNICALSECOND FLOOR WEST400 NORTH STREETHARRISBURG PA 17120**717.783.7998**[akaster@pa.gov](mailto:akaster@pa.gov)Accepts eService

TANYA J. MCCLOSKEY ESQUIRE\*CHRISTINE M. HOOVER ESQUIREOFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101717.783.5048[choover@paoca.org](mailto:choover@paoca.org)  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
Accepts eService

\*“*Via e-mail only due to Emergency Order at M-2020-3019262”*

1. I note that on May 24, 2021, subsequent to the prehearing conference, *pro se* Complainant Kerren Ricketts filed formal Complaints opposing the requested rate increases at Docket Nos. C-2021-3026118, 3026119 and requesting a rate decrease. I suggest that the parties ascertain whether this Complainant desires service of all documents or solely the filings made with the presiding officer. [↑](#footnote-ref-1)