


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 4, 2021

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

Re: Pennsylvania Public Utility Commission
v.
City of Lancaster – Water Department
Docket No. R-2021-3026682

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Enclosures:

cc: The Honorable Darlene Heep (**email only**)
Certificate of Service

*319525

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2021-3026682
 :
 City of Lancaster – Water Department :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Prehearing Memorandum, 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 4th day of November 2021.

SERVICE BY E-MAIL ONLY

Gina L. Miller, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
ginmiller@pa.gov

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555 Walnut Street
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efure@pa.gov

Courtney L. Schultz, Esquire
Shane P. Simon, Esquire
Saul Ewing Arnstein & Lehr LLP
1500 Market Street
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Philadelphia, PA 19102
Courtney.schultz@saul.com
Shane.simon@saul.com

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
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Counsel for:
Office of Consumer Advocate
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Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 4, 2021
*319526

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | | |
|---|---|------------|----------------|
| Pennsylvania Public Utility Commission, | : | | |
| | : | | |
| v. | : | Docket No. | R-2021-3026682 |
| | : | | C-2021-3029095 |
| | : | | C-2021-3029188 |
| City of Lancaster – Bureau of Water | : | | |

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and in response to the October 28, 2021 Prehearing Order issued in the above-captioned proceeding, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION AND BACKGROUND

On September 30, 2021, the City of Lancaster – Bureau of Water (Lancaster or the City) filed Supplement No. 46 to Tariff Water – Pa. P.U.C. No. 6, to become effective November 30, 2021. Lancaster, by filing this tariff supplement, seeks Commission approval of rates and rate changes that would increase the level of rates that it charges for providing services to its customers located outside of the city.

Lancaster proposes an annual increase in base rate revenues of \$4,024,593 per year from its outside-city customers. This represents an approximate 21.3% increase in the City’s annual revenues at present rates. If the City’s entire request is approved, the total bill for a residential customer using 13,600 gallons per quarter would increase from \$77.70 to \$94.14, or by \$16.44, or 21.2%.

Lancaster serves 30,858 outside-city water customers, of which 28,914 are residential, in Lancaster, Manheim, and West Lampeter Townships, Millersville Borough, Pequea, and portions of Manor, West Hempfield, and East Hempfield Townships and East Lampeter in Lancaster County, Pennsylvania.

On October 14, 2021, the OCA filed a Formal Complaint, Public Statement and Notice of Appearance in this matter. The Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance on October 5, 2021. The Office of Small Business Advocate (OSBA) filed a Formal Complaint, Public Statement, Verification, and Notice of Appearance on October 20, 2021. On October 28, 2021, the Commission issued an Order initiating an investigation into the lawfulness, justness and reasonableness of the proposed rate increases in this tariff filing, and suspended the effective date of Tariff Water – Pa. P.U.C. No. 6 until June 29, 2022, by operation of law. The Commission assigned the case to Administrative Law Judge (ALJ) Darlene Heep. A Prehearing Conference is scheduled for November 5, 2021.

The OCA filed a Formal Complaint in this matter to protect the interests of Lancaster's outside-city customers and seeks to ensure that Lancaster is permitted to implement only those rates that are fully justified and in accordance with sound ratemaking principles. The OCA will strive to prevent Lancaster from collecting all alleged costs that cannot be justified, or are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The OCA submits that Lancaster's current rates and the rates sought by the City may be unjustifiable and unlawful based upon information filed by the City in support of its claim.

II. ISSUES AND SUB-ISSUES

Based upon a preliminary analysis of Lancaster's filing, the OCA has compiled a list of issues that it anticipates will be included in its investigation of the rate increase request. It is anticipated that other issues will arise and may be pursued as discovery proceeds.

The OCA has identified several issues that may require further review as follows:

A. Rate of Return

1. **Capital Structure:** The OCA will examine whether the capital structure claimed by the City is representative of the period in which rates will be in effect and is otherwise appropriate for ratemaking purposes.

2. **Embedded Cost of Debt:** The OCA will examine the embedded cost of debt claimed by the City.

3. **Cost of Common Equity:** The OCA will perform a detailed analysis of the cost of common equity claimed by the City. Also, the OCA will carefully examine the City's methodologies and supporting data used to develop its final cost of common equity claim.

4. **Utility Specific Adjustments:** The OCA will examine whether any adjustments proposed by the City are justified.

B. Rate Design/Cost of Service

1. The OCA will examine the City's cost of service study and proposed rate design and recommend adjustments as necessary to comply with sound ratemaking principles in consideration of an appropriate level of revenue requirement.

2. The OCA will examine the reasonableness and appropriateness of the City's proposed tariff changes, including the proposed changes to the reconnection fees.

C. Accounting and Policy

1. The OCA will examine the reasonableness and accuracy of the projections of Lancaster pertaining to the water utility plant in service at the time relevant to this proceeding including, but not limited to, whether the Future Test Year (FTY) and Fully Projected Future Test Year (FPFTY) will be completed as claimed and whether retirements are accurately reflected.

2. The OCA will review the City's claims for plant additions during the projected rate year to determine if the City has demonstrated that all such costs are prudently incurred and whether the claimed plant is a proper reflection of that which will be in service during the rate year.

3. The OCA will examine the City's claims for cash working capital, contribution in aid of construction and customer advances for construction to determine whether they are at levels appropriate for use in setting base rates for Lancaster, and determine whether there are any customer deposits that should be included in rate base.

4. The OCA will review the reasonableness and accuracy of the City's revenue projections and supporting water consumption assumptions.

5. The OCA will examine the appropriateness, reasonableness, and accuracy of the Company's claims for wages and benefits, chemicals expense, taxes other than income, uncollectible accounts, pensions and OPEBs, as well as other categories of expenses.

6. The OCA will also review the claimed allowance for depreciation to ensure that it properly reflects plant that will be in service during the rate year and that the underlying service lives for the proposed accrual rates are reasonable.

D. Quality of Service

1. The OCA will examine the quality of service provided by the City to assure that Lancaster's outside-city customers receive water which is suitable for household purposes, is

continuously available and otherwise conforms with applicable standards for safe and adequate water utility service.

E. Low-Income Customer Issues

1. The OCA will examine the affordability of the proposed rates for low-income customers.

F. Other Issues

1. The OCA will examine the reasonableness of rates given the COVID-19 pandemic conditions.

2. The OCA will investigate changes to the City's case and projections due to the COVID-19 pandemic.

3. The OCA will investigate to ensure that the City is complying with all prior Orders.

4. The OCA will examine other issues affecting Lancaster's revenue requirement, rates, charges, and other tariff provisions as they are identified through discovery.

III. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witnesses in this proceeding. Each witness will present testimony in written form and may also attach various exhibits, documents, and explanatory information which will assist in the presentation of the OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that, in addition to emailing copies to OCA counsel, parties email

copies of all interrogatory answers and testimony directly to the expert witness(es) responsible for the appropriate area of the case.

Accounting and Policy:

Lafayette K. Morgan, Jr.
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044
Telephone: (410) 992-7500
E-mail: OCALancaster2021@paoca.org

Accounting and Policy/
Tariff/Low-Income Customer Issues

Morgan N. DeAngelo
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, Pa. 17101
E-mail: OCALancaster2021@paoca.org

Rate of Return/Capital Structure:

David Garrett
Resolve Utility Consulting, PLLC
101 Park Avenue
Suite 1125
Oklahoma City, OK
E-mail: OCALancaster2021@paoca.org

Rate Design/Cost of Service:

Jerome D. Mierzwa
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044
Telephone: (410) 992-7500
E-mail: OCALancaster2021@paoca.org

Quality of Service:

Terry Fought, P.E.
780 Cardinal Drive
Harrisburg, PA 17111
E-mail: OCALancaster2021@paoca.org

The OCA reserves the right to call additional witnesses, as necessary. If the OCA determines that an additional witness or witnesses will be necessary for any portion of its case, it will promptly notify all parties of record and the presiding officers.

IV. EVIDENCE

The OCA will rely on the direct, rebuttal and surrebuttal testimony of its expert witnesses as well as the testimony of the other parties to the proceeding. The OCA will present relevant exhibits to support its own testimony, including but not limited to, materials obtained from the City through discovery and cross-examination. As described above, the OCA's witnesses will present testimony in the following areas: rate design, cost of service, rate of return, accounting, regulatory policy, and quality of service.

V. SERVICE ON THE OCA

The OCA will be represented in this case by Christy M. Appleby, Assistant Consumer Advocate. The OCA has created a group e-mail address provided below. This is the only e-mail address that is required for service on the OCA; it will provide the e-mailed materials to all members of the OCA team including the consultants listed above. All documents should be served on the OCA as follows:

Christy M. Appleby, Assistant Consumer Advocate
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, Pa. 17101-1923
Telephone: (717) 783-5048
Fax: (717) 783-7152
E-mail: OCALancaster2021@paoca.org

The OCA respectfully requests that the Presiding Officer permit electronic service without the requirement of a follow-up hard copy. Only to the extent that materials are not available electronically, the OCA requests that one hard copy be served upon Christy M. Appleby at the above mailing address.

VI. PUBLIC INPUT HEARING

The OCA has received one request for a public input hearing in this matter. The OCA is also aware of eight informal rate complaints that have been filed with the Commission. The OCA requests that the Commission conduct one public input hearing by telephone or video conference in order to provide customers with an opportunity to be heard on the record. The OCA is able to use its call center staff to sign up City consumers who want to testify or listen to the public input hearing. The OCA will be prepared to discuss the public input hearing at the prehearing conference.

VII. DISCOVERY RULE MODIFICATIONS

To date, the OCA has served five (5) sets of interrogatories on the City. The OCA anticipates also using informal discovery. The OCA proposes to amend the Commission's discovery rules in order to assist the parties in clarifying the issues and developing positions and potential resolutions more quickly. The OCA proposes to amend the Commission's discovery regulations in accordance with the following:

- A. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories. Discovery propounded after 12:00 noon on a Friday or the day before a holiday will be deemed served on the next business day for purposes of determining the due date of the responses.
- B. Objections to interrogatories will be communicated orally to the propounding party within three (3) days of service; unresolved objections will be served in writing to the propounding party within five (5) days of service of interrogatories.
- C. Propounding parties will file Motions to dismiss objections and/or direct the answering of interrogatories with the ALJ within three (3) days of service of written objections.
- D. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) days of service of such motions.

- E. Rulings over such motions to be issued, if possible, within seven (7) days of filing of the motion.
- F. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days.
- G. Requests for admission will be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.
- H. Answers to on-the-record data requests will be served in-hand within seven (7) calendar days of the request.

The OCA respectfully requests that, if adopted, the proposed modifications take effect on the date of the Prehearing Conference.

VIII. PROCEDURAL SCHEDULE

The OCA, I&E, and OSBA propose the following procedural schedule:

| | |
|---------------------------------|------------------------------------|
| Public Input Hearing | December 16, 2021 at 6 p.m. |
| Other Parties' Direct Testimony | December 23, 2021 |
| Rebuttal Testimony | January 13, 2022 |
| Surrebuttal Testimony | January 28, 2022 |
| Rejoinder Outline | February 4, 2022 |
| Hearings | February 9, 2022-February 10, 2022 |
| Close of Record | February 11, 2022 |
| Main Brief | March 3, 2022 |
| Reply Brief | March 14, 2022 |

The OCA has shared the proposed schedule with the City. The OCA will work with all parties to develop a mutually agreeable schedule.

IX. SETTLEMENT

The OCA is willing to participate in settlement discussions.

Respectfully Submitted,

/s/ Christy M. Appleby

Christy M. Appleby

Assistant Consumer Advocate

PA Attorney I.D. # 85824

E-Mail: CAappleby@paoca.org

Counsel for:

Christine Maloni Hoover

Interim Acting Consumer Advocate

Office of Consumer Advocate

555 Walnut Street

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DATE: November 4, 2021