**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

 : R-2021-3026682

v. : C-2021-3029188

C-2021-3029095

 : C-2021-3019100

City of Lancaster - Bureau of Water :

**PREHEARING ORDER**

 On September 30, 2021, the City of Lancaster-Water Department (“City of Lancaster”) filed with the Commission Supplement No. 46 to Tariff Water – Pa. P.U.C. No. 6 (Supplement No. 46) to become effective November 29, 2021. Supplement No. 46 would increase total annual operating revenues for water service by approximately $4,024,593. On October 28, 2021, the Commission suspended the proposed Tariff by operation of law until June 29, 2022. The matter was assigned to the OALJ for Alternative Dispute Resolution, if possible, and for the prompt scheduling of such hearings as may be necessary to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Supplement No. 46.

A telephonic prehearing conference was held on November 5, 2021. Present were the following:

Gina Miller, Esq. – Commission Bureau of Investigation and Enforcement (I&E)

Courtney Schultz, Esq. - City of Lancaster – Bureau of Water

Shane Simon, Esq.

Christy Appleby, Esq – Office of Consumer Advocate (OCA)

Erin Fure, Esq. – Office of Small Business Advocate (OSBA)

This order sets forth the procedural matters addressed at the prehearing conference.

IT IS ORDERED:

1. That pursuant to 52 Pa. Code §§ 5.32 and 5.61, complaints filed in the instant matter are considered docketed with the proceeding and need not be consolidated with the Commission’s investigation or answered by Respondent. A person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint’s filing. 52 Pa. Code § 5.32(b). The following Complaints have been filed:
	1. Office of Consumer Advocate C-2021-3019161
	2. Office of Small Business Advocate C-2021-3019100
	3. Frank D. Kitzmiller C-2021-3029426
	4. Patricia and Andre Renna C-2021-3029450
	5. Joel and Karen Wenrich C-2021-3029469
	6. William Waters C-2021-3029470

2. That the following schedule is adopted[[1]](#footnote-1):

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

1. That parties of record and parties to be officially served are on the attached service list. Any changes, corrections or additions to the service list should be directed to Athena Delvillar, Legal Assistant, at sdelvillar@pa.gov.
2. That parties not participating in the prehearing conference or entering this matter subsequent to the prehearing conference must comply with the agreements reached and matters decided at the prehearing conference and set forth in this order, including, but not limited to, any special discovery rules and the litigation schedule established for this case.
3. That parties may arrange service among themselves as they agree. Pursuant to 52 Pa. Code § 5.154(c), the parties are permitted without further order to limit the service of documents to parties who indicate that they do not wish to be served with such documents. **Parties should review the Pre-hearing Memoranda and comply with the Service of Documents requests therein.**
4. That an active party must register to e-file with the Commission’s Secretary’s Bureau if you have not already done so. Filings may not be made by emailing or faxing to the Secretary’s Bureau.
5. That if a party determines that he or she would *not* like to be an active participant and receive the voluminous documents that will be exchanged, that party should advise the undersigned and the other parties by email. Parties that are *not* active participants will receive copies of briefs and orders issued, may testify at the public input hearing and may file appropriate pleadings.
6. **That if you send any documents in this case to the undersigned or any other parties listed on the attached service list, you must provide copies to all other parties as well.**
7. That parties may serve documents electronically by 4:30 p.m. to meet any required due date.
8. That the parties will issue initial discovery requests **no later than November 15, 2021,** as discussed at the prehearing conference.
9. That the parties have agreed to and will comply with the following discovery procedure modifications:
10. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories. Discovery and discovery related pleadings 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.
11. 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.
12. 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.
13. 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.
14. Rulings over such motions to be issued, if possible, within seven (7) days of filing of the motion.
15. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days.
16. Requests for admission will be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.
17. Answers to on-the-record data requests will be served in-hand within seven (7) calendar days of the request.
18. That the parties are encouraged to cooperate and exchange information on an informal basis and to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed.

1. **That all motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§ 5.361, 5.371-5.372.
2. That the parties comply with the Commission’s requirements for the preparation and service of written testimony. 52 Pa. Code § 5.412. These include, but are not limited to, the requirement that **written testimony must be accompanied by all exhibits to which it relates**. Written testimony shall be marked with numerical, sequential statement numbers.
3. That **OCA and City of Lancaster - Bureau of Water** will:

a. provide additional information regarding the public input hearing no later than December 18, 2021.

b. directly advise those filing informal complaints, protests and comments in these proceedings of the date, time and how to participate in the public input hearing at least two weeks before the public input hearing.

1. That no protective orders are requested at this time and that the parties will submit joint proposals or pleadings if they become necessary.

 17. That the parties shall comply with the provisions of

52 Pa. Code § 5.243(e)which prohibit the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief unless the party is introducing evidence in support of a proposed settlement.

18. That unless COVID-19 restrictions are lifted, the hearing will be held telephonically. If in-person proceedings have resumed by the time of the hearing, the hearing shall be held in Philadelphia.

19. That each party shall provide all parties and the undersigned with electronic copies of any documents to be presented during the hearing **no later than five business days before the hearing** unless otherwise modified for special circumstances.

 20. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa. Code §§ 5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

21. That the evidentiary hearings in this matter constitute formal legal proceedings and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

22. That parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa. Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to eFile with Secretary’s Bureau all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.

23. That the parties must comply with 52 Pa. Code §§5.501, *et* *seq*., regarding the preparation and filing of briefs. Service can be made electronically by no later than 4:30 p.m. on the dates listed, with a hard copy received in hand on the next business day. Parties are directed to e-mail to the undersigned a copy of as-filed briefs in ADOBE or other compatible PDF format **in addition to** a WORD-formatted document. The format of the briefs served electronically on the parties may be as requested by the parties.

24.That all briefs shall comply with the requirements of 52 Pa. Code §§ 5.50l and 5.502,and in addition to the mandatory contents set forth in 52 Pa. Code § 5.501(a),all main briefs, regardless of length, must contain:

 A. A table of contents;[[2]](#footnote-2)

 B. A history of the proceeding;

 C. A discussion;

D. Proposed findings of facts (with record citations to transcript pages, written testimony pages or exhibits where supporting evidence appears);

E. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and

F. Proposed ordering paragraphs specifically identifying the relief sought.

52 Pa. Code § 5.501(e) requires that “Briefs shall be as concise as possible.” Page limitations on briefs may be discussed on or before the last day of hearing, if necessary.

25. That if a party does not file a reply brief, it will be assumed that the party does not dispute the assertions, contentions or arguments made by the other parties in their main briefs. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties’ assertions, contentions or arguments.

26. That any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by permission for good cause.

 27. That the parties are to confer among themselves in an attempt to resolve all or some of the issues. The parties are reminded that it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). If a settlement is reached, a joint settlement petition executed by a representative of each party to be bound thereby, together with a statement in support of settlement by each signatory party, must be filed with the Secretary for the Commission and served on the undersigned.

 28. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa. Code § 5.223(a).

Date: November 10, 2021 /s/

 Darlene Heep

 Administrative Law Judge

**C-2021-3026811 - OFFICE OF CONSUMER ADVOCATE v. PENNSYLVANIA POWER COMPANY**

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1. Testimony shall not be filed with the Commission at the time of service, but parties may file a certificate of service. [↑](#footnote-ref-1)
2. In addition, each reply brief must contain a table of contents. [↑](#footnote-ref-2)