



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 16, 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.
Community Utilities of Pennsylvania
Docket Nos.: R-2021-3025206 (Water)
R-2021-3025207 (Wastewater)

I&E Brief

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Brief of the Bureau of Investigation and Enforcement (I&E)** for the above-captioned proceedings.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Allison C. Kaster'. The signature is written in a cursive, slightly slanted style.

Allison C. Kaster
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
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ACK/ac
Enclosure

cc: Administrative Law Judge Dennis J. Buckley (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2021-3025206
	:	
Community Utilities of Pennsylvania Inc.	:	
Water Division	:	

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2021-3025207
	:	
Community Utilities of Pennsylvania Inc.	:	
Wastewater Division	:	

**BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Allison C. Kaster
Deputy Chief Prosecutor
PA Attorney ID No. 93176

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

Dated: November 16, 2021

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I. INTRODUCTION

A. History of the Proceeding

On April 12, 2021, Community Utilities of Pennsylvania Inc. (CUPA), filed Supplement No. 9 to Tariff Water-Pa. P.U.C. No. 1 to become effective June 12, 2021 seeking to increase CUPA's total annual operating revenues for water service by approximately \$757,517, or 36.6%. On the same day CUPA – Wastewater Division filed a tariff supplement proposing to increase annual revenues by \$998,705 or 37.4%, effective June 12, 2021. By Order entered May 6, 2021, the Commission suspended the tariff supplements for investigation until January 12, 2022, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d).

On April 15, 2021, the Office of Small Business Advocate (“OSBA”) filed a Formal Complaint with respect to the rate request. On April 26, 2021, the Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. The Office of Consumer Advocate (“OCA”) filed a Formal Complaint on May 7, 2021. Numerous Formal Complaints were filed by customers.

The proceeding was assigned to the Office of Administrative Law Judge for hearing and for the issuance of a Recommended Decision. A telephonic Prehearing Conference was held, pursuant to Notice, on May 13, 2021, with Administrative Law Judge Dennis J. Buckley (“ALJ”) presiding. The parties agreed upon a procedural schedule in this matter which was presented to ALJ Buckley at the Prehearing Conference. By Order entered June 1, 2021, ALJ Buckley consolidated the Company's water and wastewater base rate proceedings for hearing and adjudication.

ALJ Buckley conducted a telephonic public input hearing on June 29, 2021 at 6:00 p.m. The hearing concluded at approximately 11:30 p.m., and approximately 42 customers, including three Pennsylvania State Representatives, testified.

On July 19, 2021, the Company, I&E, OCA and OSBA filed a Joint Petition for Extension of Procedural Schedule to provide additional time to litigate the case given the high level of customer interest at the Public Input Hearing. The parties requested an extension of the statutory suspension period from January 12, 2022, to February 18, 2022, which was granted by Chief Administrative Law Judge Charles E. Rainey Jr. on July 22, 2021.

Pursuant to the procedural schedule, the parties exchanged direct, rebuttal, surrebuttal, and written rejoinder testimony. All cross-examination was waived by the parties and, on September 8, 2021, the parties attended the telephonic evidentiary hearing to enter evidence into the record.

On October 12, 2021, the Company, I&E, OCA and OSBA presented the Joint Petition for Full Settlement of Rate Proceedings (“Settlement” and “Joint Petition”) and Statements in Support of settlement to ALJ Buckley. By Order issued November 9, 2021 (“Order”), ALJ Buckley rejected the settlement and certified the question as to whether such a rejection was proper to the Commission. I&E files this timely brief in support of the Settlement and asserts that the ALJ’s rejection of the Settlement was improper.

B. Burden of Proof and Standard of Review

In any proceeding upon the Commission’s motion involving a public utility’s proposed rate or in any proceeding upon complaint involving a proposed rate increase,

the burden to show that the proposed rate is just and reasonable falls squarely upon the utility.¹ Moreover, it is well-established that the utility must produce substantial evidence to satisfy its burden.² Substantial evidence is “that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.”³ Thus, the Company must affirmatively prove the reasonableness of each element of each of its claims. Pursuant to Section 315(a) of the Public Utility Code, the burden of proof for all claims remains on the Company and the proponent of any adjustment need only go forward with sufficient evidence to support its reasonableness.⁴

Here, to determine whether the Settlement should be approved, the Commission must determine whether the Settlement rates are just and reasonable and whether the Settlement terms are in the public interest.⁵ The ALJ has erroneously concluded that the parties have failed to make such a demonstration. I&E has already fully supported the Settlement in its Statement in Support and has demonstrated that its comprehensive terms are in the public interest. Here, I&E will address the issues raised in the Order concerning the black box nature of the Settlement, the import of gradualism and rate shock with respect to the overall Settlement, and the concerns about the quality of service.

¹ 66 Pa. C.S. § 315(a); *Irwin A. Popowsky v. Pa. PUC*, 674 A.2d 1149 (Pa. Cmwlth. 1996).

² *See Brockaway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Lower Frederick Township v. Pa. PUC*, 409 A.2d 505 (Pa. Cmwlth. 1980).

³ *Dutchland Tours, Inc. v. Pa. PUC*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975).

⁴ *Pa. PUC v. West Penn Power Company*, 69 P.U.R.4th 470, 59 Pa. PUC 552 (1985).

⁵ 66 Pa. C.S. § 1301; *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pa. PUC v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

II. ARGUMENT

A. Black Box Settlement

As proposed, CUPA originally requested \$757,517 overall revenue increase for its water operations and \$998,705 for its wastewater operations. I&E analyzed the ratemaking claims contained in the Company's filing including, but not limited to, operating and maintenance expenses, rate base, and the cost of common equity. Furthermore, I&E issued extensive discovery and engaged in discussions with the Company. Based on its analysis, I&E's litigation position in this proceeding recommended increases of \$550,938⁶ for CUPA's water operations and \$701,845⁷ for wastewater operations. To arrive at these revenue requirement recommendations, I&E utilized a 9.25% return on equity and made operating expense adjustments totaling \$100,276⁸ for water and \$139,837⁹ for wastewater. Pursuant to the Joint Petition, the Settlement Rates reduce the increases as they are designed to produce additional annual water operating revenue of \$630,00 and wastewater revenue of \$830,00.

While ALJ Buckley recognizes that black box settlements are common in Commission practice, the Order takes issue with the black box nature of this particular Settlement.¹⁰ After the Settlement and Statements in Support were submitted in this proceeding, the ALJ informally requested the parties to define the return on equity

⁶ I&E St. No. 1-SR (Water), pp. 3-5.

⁷ I&E Statement No. 1-SR (Wastewater), pp. 3-4.

⁸ I&E Statement No. 1-SR (Water), p. 3.

⁹ I&E Statement No. 1-SR (Wastewater), p. 3.

¹⁰ Order at 25.

(“ROE”) and overall rate of return that was used to arrive at the settlement rates.¹¹ The parties declined to do so, primarily because doing so is impossible as there is no agreement among the parties concerning the appropriate ROE in this proceeding. The Commission has supported the use of black box settlements because determining a revenue requirement involves complex and interrelated adjustments (expenses, depreciation, rate base, taxes, cost of capital) and reaching an agreement between all parties on these components could be difficult and impractical. The Commission has recognized the importance of black box settlements in the settlement process:

In this case, the parties have reached what is referred to as a “black box” settlement where the settlement provides for an increase in the utility's revenues but does not indicate how the parties calculated the increase. The Commission has permitted “black box” settlements as a means of promoting settlements in contentious base rate proceedings. *Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg*, Docket No. R-2010-2172665 (Order entered January 13, 2011). The Commission has observed that determining a utility's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting expenses, depreciation, rate base, taxes and the utility's cost of capital. Reaching an agreement among the parties on each component can be difficult and impractical. As a result of this complexity, the Commission supports the use of “black box” settlements. *Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013).¹²

¹¹ Order at 25, FN 8. In support of his request to identify the rate of return in this proceeding, ALJ Buckley referred to the *Pa. PUC v. Appalachian Utilities, Inc.* base rate proceeding, stating that “counsel for Appalachian volunteered the rate of return in the Joint Settlement (also a “black box” settlement) filed in that case...” I&E reviewed the Commission Order, Recommended Decision and settlement in that proceeding and did not find a reference to an agreed upon rate of return in those documents. Moreover, even if the ROE was volunteered informally, it fails to justify requiring it in the CUPA proceeding because, for the reasons identified above, the parties cannot provide or volunteer this information given that agreement upon a specific ROE was simply not discussed or contemplated during the lengthy settlement negotiations.

¹² *Pa. PUC et al v. United Water*, R-2015-2462723, Recommended Decision at 6, (RD entered July 24, 2015), adopted in full (Order entered Aug. 20, 2015).

This is the case here as there is no one, uniform way that the parties reached the agreed upon revenue requirements. I&E may have been able to agree to the settlement increases by keeping its ROE relatively low but removing or reducing some of its recommended expense adjustments, while another party may have gotten to that number by imputing more expense adjustments but allowing for a higher equity return. In short, there are a myriad of ways that different parties can reach the agreed upon revenue requirement, which means that there is no one ROE or overall rate of return that the parties can specify in the Settlement.

When black box settlements are utilized, the Commission must determine whether the overall revenue increase is in the public interest, not whether the specific components that comprise the revenue requirement is in the public interest:

In considering the Settlement, we are determining, *inter alia*, whether an increase of \$16.7 million in annual operating revenue is in the public interest without making a determination of any specific components that may have led to the calculation of the specific revenue requirement. Consequently, we are unable to make any determination regarding the rate of ROE that Aqua may ultimately realize from the rates adopted under the proposed Settlement. Accordingly, the ALJs' Attachment 1 may not be used as a benchmark or for comparison purposes to the agreed-upon DSIC ROE, within the context of this proceeding. Additionally, any reference to the ALJs' ROE calculation should be ignored.¹³

Similarly, the Commission must determine whether the proposed water and wastewater revenue increases contained in the Settlement satisfy the public interest. For the reasons contained in its Statement in Support and further discussed herein, I&E

¹³ *Pa. PUC v. Aqua Pennsylvania, Inc.*, R-2011-2267958, p. 27 (Order entered June 7, 2012).

submits that the proposed increase negotiated by the parties is in the public interest and that the Commission can make this determination despite the fact that the ROE and overall rate of return is not explicitly provided in the Settlement.

B. Gradualism and Rate Shock

The ALJ rejects the settlement based on gradualism and rate shock. While I&E recognizes that these are important ratemaking principles, they cannot override the fact public utility regulation allows for the recovery of prudently incurred expenses as well as the opportunity to earn a reasonable return on the value of assets used and useful in public service. The increases proposed in this Settlement are legally sound and supported by the evidentiary record.

It is undisputed that the Commission must authorize a sufficient, or fair, rate of return to public utilities to ensure adequate revenues to cover operating expenses, debt serviced expenses and common and preferred (if necessary) dividends, as well as to maintain the financial integrity of the utility and enable the public utility to attract needed debt in equity capital in the marketplace or on reasonable terms, in competition with firms of similar risk.¹⁴ Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property, in violation of the Fourteenth Amendment.¹⁵

¹⁴ Order at 24. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) and *Bluefield Water Works Improvement Co. v. Public Service Commission*, 262 U.S. 679 (1923).

¹⁵ *Bluefield Water Works Improvement Co. v. Public Service Commission*, 262 U.S. 679, 690 (1923).

1. Frequency of Rate Filings

The ALJ's concerns about rate shock and gradualism appear to be based, in large part, on the Company's frequency of rate filings. CUPA filed its last rate case in April 2019 and received Commission approval to increase rates in November 2019.¹⁶ The instant rate case was filed in April 2021; therefore, the ALJ contends that the frequency of rate filings supports his argument that increasing rates will result in rate shock and violate the principle of gradualism. To that end, the Order states:

In assessing the reasonableness of the present proposed Joint Settlement and the linked issues of rate shock and gradualism, it is important to consider that CUPA's request for another substantial increase in rates was filed after a stay-out of just under two years.¹⁷

The Order also notes, "Second, and most significantly, the frequency with which CUPA is asking for substantial rate increases completely refutes the contention of the parties that the rates set forth in the Joint Settlement reflect gradualism."¹⁸ Finally, in concluding that the Settlement should be rejected, the ALJ again states, "The Joint Proposed Settlement filed by the parties in this consolidated proceeding on October 12, 2021, is rejected as it is not in the public interest because CUPA, having been granted substantial rate increases in the previous rate case, *Pa. PUC et al. v. Community Utilities of Pennsylvania, Inc.*, Docket No. R-2019-3008947 (2019), has not subsequently provided the quality of utility service that would warrant further increases..."¹⁹

¹⁶ *Pa. PUC vs. CUPA*, Docket Nos. R-2019-3008947 and R-2019-3008948 (Order entered November 14, 2019).

¹⁷ Order at 18.

¹⁸ Order at 30.

¹⁹ Order at 36.

CUPA's frequency of rate increases is not a legally sound basis on which to reject the Settlement as the Code and case law allow CUPA to file base rate cases to recover its increased investment in plant and recover prudent expenses. The record demonstrates that significant investment was made in the intervening period between CUPA's last rate filing and the instant filing given that the Company received Commission approval to acquire the Tamiment water and wastewater assets in June 2019. As a result, the Company reflected Tamiment's water and wastewater rate base of approximately \$2,567,397²⁰ in this case. In addition, since acquiring Tamiment in 2019, CUPA significantly upgraded Tamiment's water system by replacing the pump, electrical wiring and piping for Well 3 in September 2019 and made similar investments in Well 1 in September 2020.²¹ With respect to Tamiment's wastewater infrastructure, the Company fixed the lagoon pump, repaired the spray irrigation system, and replaced and upgraded the electrical system in 2020. Additionally, looking forward, the Company's rate increases reflected capital expenditures of approximately \$4,000,000 in wastewater capital project expenditures and \$1,757,000 in water capital expenditures in 2021 and 2022.²² Therefore, the ALJ's arbitrary standard that CUPA should not be permitted to increase rates in this proceeding because it received a substantial increase in 2019 is simply not legally sound given that the record is clear that CUPA acquired the Tamiment system since its last rate case and will continue to invest in its system going forward.

²⁰ CUPA St. 9-R, pp. 3-4. Settlement ¶ 27.

²¹ Settlement ¶ 49(e).

²² CUPA WW St. 1, pp. 15-16. CUPA W St. 1, p. 15.

Moreover, the ALJ's position is contrary to an express Commission order because CUPA was directed by the Commission to file the instant rate case. In CUPA's 2019 acquisition of the Tamiment water and wastewater assets, Commission ordering paragraph 9 stated:

Within 18 months following the closing date of the transaction, Community Utilities of Pennsylvania, Inc. – Water *shall file a base rate case* with the Pennsylvania Public Utility Commission.²³

The instant rate case was filed to comply with that Commission directive, yet the ALJ is using the fact that the Company filed this rate case so soon after its prior rate filing as a reason to reject the Settlement. Doing so is improper given that CUPA is legally permitted to increase rates and, in fact, was directed by the Commission to make such a filing.

2. Amount of Revenue Increase

In addition to the frequency of rate filings, the ALJ states that the Settlement rates violate gradualism and rate shock because of the amount of the increases proposed. As discussed above, this is a black box settlement; however, a review of the litigation positions in this proceeding demonstrate that the Settlement rates are supported by the record:

²³ Joint Application of Community Utilities of Pennsylvania, Inc. – Water and Pennsylvania Utility Company – Water for approval of: the transfer, by sale, of the water system assets of PA Utility Co.-Water; the right of CUPA-Water to begin to offer, render, furnish and supply water service to the public in a portion of Lehman Township, Pike County, Pennsylvania; and the abandonment of all water service by PA Utility Co.-Water to the public in Lehman Township, Pike County, Pennsylvania, Docket No. A-2018-3005430, p. 13, Ordering Paragraph 9 (Order entered June 25, 2019) (Emphasis added).

	Water Increase	Wastewater Increase
CUPA Filing	\$757,517	\$998,705
I&E Litigation	\$550,938	\$701,845
OCA Litigation	\$607,708	\$682,198
Settlement Rates	\$630,000	\$830,000

The ALJ correctly opined, “It is normal for the utility to start with what it views as an optimal funding request, for the adverse parties to challenge that requested increase, and for the resulting rates to be somewhere in between whether as a result of litigation or settlement.”²⁴ A review of the chart above demonstrates that this is precisely what occurred in the instant Settlement as the rates are above the litigation positions offered by I&E and OCA and are below the Company’s filed request.

Although the settlement process worked as it should, the ALJ takes issue with the Settlement rates, stating, “I would *expect* any negotiated rate to be lower (and one might expect substantially lower) than that originally proposed by the utility. The *de minimis* reduction of the rate increase in this case does not convince me of the reasonableness of the resulting rates.”²⁵ First, I&E does not negotiate settlement rates based on expectation that rates should be lower, let alone substantially lower, than the filed request. Settlement negotiations are not outcome determinative as I&E uses the ratemaking equation to determine an appropriate settlement range. I&E begins with its litigation position as a

²⁴ Order at 28-29.

²⁵ Order at 30.

starting point, which in this proceeding utilized a 9.25% return on equity and included operating expense adjustments totaling \$100,276²⁶ for water and \$139,837²⁷ for wastewater. Next, I&E adjusts its equity position and evaluates the strengths and weakness of its individual expense adjustments to determine an appropriate settlement range. The ALJ's expectation that negotiated rates should be "substantially lower" is not part of I&E's settlement analysis especially since I&E's mission is to protect the public interest, which includes balancing the interests of the utility. Second, I&E disagrees with the ALJ's characterization that Settlement rates reflect a "*de minimis* reduction of the rate increase"²⁸ given that those rates are the product of significant negotiation and reflect a reduction of \$127,517 in water and \$168,705 in wastewater from the Company's filed request. Similarly, to arrive at the Settlement rates, I&E moved from its litigation position by increasing its water rates \$79,062 and its wastewater rates \$128,155. This movement from both I&E and CUPA is not *de minimis* as characterized by the ALJ; rather, it is a product of an internal analysis of an appropriate settlement range and robust settlement discussions among the parties.

The ALJ's grounds for rejecting the Settlement based on gradualism and rate shock is based on a belief that CUPA should not be able to recover "double-digit"²⁹ rate increases in a two-year period. The ALJ's rejection of this Settlement seems to be based on his belief that CUPA's increases are too much and too frequent; however, this cannot

²⁶ I&E Statement No. 1-SR (Water), p. 3.

²⁷ I&E Statement No. 1-SR (Wastewater), p. 3.

²⁸ Order at 30.

²⁹ Order at 26, 27, 31, 33, 34, 35.

override the reality that the Company has significantly invested in its water and wastewater systems since its last rate case and will continue to make investments in the test year. Denying CUPA recovery is not legally supported and must be rejected.

C. Quality of Service

The Order states that the Company's failure to provide safe and reliable service is further reason to deny the Settlement. To reach this conclusion, the Order cites extensively to the customer testimony provided at the public input hearing.³⁰ I&E agrees that the testimony was compelling; however, the ALJ's refusal to look at that testimony in conjunction with the Company's responsive testimony and proposed Settlement terms does not accurately inform the Commission about the quality of service in CUPA's service territory.

The Order noted that, due to the extensive service concerns expressed at the public input hearing, I&E initially recommended that CUPA receive zero return on equity in this proceeding.³¹ I&E understands that such a recommendation is unusual; however, it believed it was warranted based on the service concerns raised by customers. While the Order highlighted I&E's zero ROE recommendation made in its direct testimony, it failed to provide I&E's full position as I&E ultimately withdrew its 0% equity recommendation in surrebuttal testimony based on the extensive CUPA rebuttal testimony explaining the service issues.³² Based on CUPA testimony sponsored by witnesses Emily Long (CUPA Statement No. 7-R) and LaQuisha M. Parks (CUPA Statement No. 8-R), I&E determined

³⁰ Order at 19-23, 35.

³¹ Order at 25, FN 8.

³² I&E St. No. 2-SR, pp. 20-22.

that its 0% ROE recommendation was no longer in the public interest given the record evidence. Unlike I&E's testimony, the Order spends pages detailing public input testimony, with a particular focus on the testimony provided by three State Representatives,³³ but failed to recognize the extensive responsive testimony provided by CUPA in the rebuttal phase or reflect that several the Settlement terms were designed to address the concerns raised.

The Order brushes off the Settlement service terms as “measures that should already be in place, particularly given the double-digit rate increases approved for CUPA in 2019.”³⁴ These terms provide value, but for some unknown reason they were summarily dismissed by the ALJ as something that the Company should have already been doing. The fact is that the Company was not required to do them but, pursuant to the Settlement, these terms will now be adhered to on a going forward basis. This is in the interest of CUPA's customers.

Additionally, the Order improperly chastises the parties for failing to understand and address the concerns raised with respect to sewage backups due to grinder pump failures. The Settlement reflects that grinder pumps are customer owned property but requires CUPA to assist customers by providing information about the operation and maintenance of grinder pumps with the goal of limiting these failures in the future. The ALJ determined that this term was not sufficient finding that, “The issue appears to be that sewage from CUPA's system is backing up into the pumps and is destroying them.

³³ Order at 19-24.

³⁴ Order at 34.

No amount of customer intervention will change that, nor would I expect customers to clean backed-up sewage out of their pumps.”³⁵ To arrive at the conclusion that grinder pump failures are CUPA’s responsibility, the ALJ ignored the Company’s rebuttal testimony, I&E’s summary of the issue in its Statement in Support, and the Stipulations of Fact contained in the Settlement. To be clear, CUPA provided extensive rebuttal testimony concerning the steps it took to investigate the grinder pump concerns that were raised.³⁶ I&E summarized that testimony in its Statement in Support noting that the Company hired a contractor in July 2020 to investigate the grinder pump issues and found no blockages. The Statement in Support also stated that the Company pressure tested the system and found no blockages that would impact the grinder pumps. Additionally, this issue was also appropriately summarized and cited in the Settlement where the parties agreed that grinder pumps are the customer’s property and responsibility to maintain, CUPA and its contractor investigated areas with grinder pump issues, pressure tested the system and found no blockages.³⁷ While the ALJ states that it is not his responsibility to sift through the record,³⁸ a discussion of this issue was included in the Company’s rebuttal testimony, that testimony was summarized and cited in I&E’s Statement in Support, and was also included in the Settlement Stipulations of Fact. All of that was ignored in his determination that CUPA is responsible for the

³⁵ Order at 34-35.

³⁶ CUPA Statement No. 7-R, pp. 11-14.

³⁷ Settlement, ¶ 50.

³⁸ “It is not the role of a presiding officer to sift through an evidentiary record searching for support to justify a proposed Settlement when the parties to the case are responsible for doing so and have had an opportunity to meet that responsibility.” Order, p. 27.

grinder pump failures, which is legally unsupported as there is no requirement that the Company must maintain, replace, or remediate failures of customer owned property.

III. CONCLUSION

For the reasons stated herein and in its Statement in Support of Settlement, the Bureau of Investigation & Enforcement respectfully requests that the Commission find that that the ALJ's rejection of the Settlement was improper and approve the Settlement without modification.

Respectfully submitted,

A handwritten signature in black ink that reads "Allison C. Kaster". The signature is written in a cursive style with a large initial 'A' and a long horizontal stroke at the end.

Allison C. Kaster
Deputy Chief Prosecutor
PA Attorney ID No. 93176

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

Dated: November 16, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
v. :
Community Utilities of Pennsylvania :

Docket Nos.: R-2021-3025206 (Water)
R-2021-3025207 (Wastewater)

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Brief** dated November 16, 2021, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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