


COMMONWEALTH OF PENNSYLVANIA



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November 16, 2021

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, Inc. -
Water and Wastewater Divisions
Docket Nos. R-2021-3025206 (Water)
R-2021-3025207 (Wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief on Material Question in the above-referenced proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Dennis J. Buckley (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*320024

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
 :
 v. : Docket Nos. R-2021-3025206 (W)
 : R-2021-3025207 (WW)
 :
 Community Utilities of Pennsylvania, Inc. -- :
 Water and Wastewater Divisions :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Brief on Material Question, 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 16th day of November 2021.

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Dated: November 16, 2021
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
Office of Consumer Advocate	:	
	:	
v.	:	
	:	
Community Utilities of Pennsylvania, Inc.	:	Docket Nos. R-2019-3008947
Water Division	:	C-2019-3009591
	:	
Community Utilities of Pennsylvania, Inc.	:	Docket Nos. R-2019-3008948
Wastewater Division	:	C-2019-3009592

BRIEF OF THE OFFICE OF CONSUMER ADVOCATE
ON MATERIAL QUESTION

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.305, Administrative Law Judge Dennis J. Buckley (ALJ) issued an Order Certifying Material Question to the Commission (Order) on November 9, 2021. The material question posited by the ALJ is the whether his rejection of the Joint Petition for Full Settlement of Rate Proceedings (Settlement) filed on October 12, 2021 is proper.¹ Order at 3. This Settlement was entered into by all active parties to the proceeding: Community Utilities of Pennsylvania Inc. Water and Wastewater Divisions (CUPA or Company), the Office of Consumer

¹ ALJ Buckley states that certification to the Commission is required under the Commission’s Procedures Manual; however, it appears that there is another option – to issue a Recommended Decision. Pennsylvania Public Utility Commission Procedures Manual, Section 1105, pp. 11-4, 11-5 (2012) (quoted on page 2 of the Order); *see also* Office of Administrative Law Judge Procedures Manual, Section 8.2D (quoted on page 2, note 1 of the Order). The ALJ specifies that the choice to certify a Material Question was “not about expediting the proceeding or preventing prejudice”. Order at 3. It is not clear why a Recommended Decision was not issued. The OCA submits that the Exception and Reply Exception process, which is accompanied by a Secretarial Letter explaining the deadlines and process for response would have been more conducive to a full resolution and participation by the customer complainants than the subject Order.

Advocate (OCA), the Bureau of Investigation & Enforcement, and the Office of Small Business Advocate.

The OCA submits this Brief in response to the Order and in support of the proposed Settlement. For the reasons set forth herein and in the OCA's Statement in Support, the OCA respectfully disagrees with the ALJ's conclusion that the Settlement does not address gradualism and quality of service. Order at 25-35. As such, the OCA submits that the Material Question should be answered in the negative.

II. ARGUMENT

A. Timing of the Rate Increase

One of the concerns raised by the ALJ is the frequency of rate increases. Order at 30-31. Specifically, rates for Community Utilities of Pennsylvania's water and wastewater customers were increased effective November 2019. *Pa. P.U.C. v. Community Utilities of Pennsylvania, Inc.*, Docket No. R-2019-3008947, Order (Nov. 14, 2019) (*2019 Rate Case*). The current base rate case was filed on April 12, 2021 and the proposed Settlement provides that new rates will go into effect on January 12, 2022, which is the end of the original statutory suspension period. Settlement, ¶ D.5. It should be recognized, however, that the timing of this rate filing was determined by the Commission in its Orders approving CUPA's acquisition of the water and wastewater assets of Pennsylvania Utility Co. (Tamiment). *Joint Application of Community Utilities of Pennsylvania, Inc. – Water and Pennsylvania Utility Co. – Water*, A-2018-3005430, Order at 13 (June 25, 2019)²; *Joint Application of Community Utilities of Pennsylvania, Inc. – Wastewater and Pennsylvania Utility Co. – Wastewater*, A-2018-3005431, Order at 14 (June 25,

² <https://www.puc.pa.gov/pcdocs/1625236.docx> (water)

2019).³ In those Orders, the Commission directed CUPA to file a base rate case within 18 months or by December 2020. As noted, CUPA did not file a base rate case until April 2021.

Although not addressed in the Order, the 2019 rate increase applied to water customers in CUPA's Penn Estates Utilities, Inc. (Penn Estates) and Utilities, Inc. - Westgate (Westgate) territories and wastewater customers in CUPA's Penn Estates and Utilities Inc. of Pennsylvania (UIP) territories.⁴ Rates for Tamiment customers have not increased in more than 10 years. CUPA W St. 4-R at 4; CUPA WW St. 4-R at 4.

Finally, the ALJ suggests that the stay-out proposed in the Settlement is not sufficiently long and points to two cases where Settlements providing three-year stay-outs were approved. Order at 29-31. If CUPA files a rate case in September 2023, the earliest it could file new cases under the stay-out contained in the settlement, rates approved in this proceeding should remain in effect for 2.5 years. Although this is not quite the three years suggested by the ALJ, the length of a stay-out (and even whether a stay-out is included in a proposed settlement) is dependent on a number of factors specific to each rate filing.

B. Gradualism

1. Consolidation

In the current proceeding, CUPA proposed to consolidate rates of the Tamiment service territory with the rates of the already consolidated territories, resulting in a larger increase for Tamiment water customers, who currently pay lower water rates than the other CUPA customers.

³ <https://www.puc.pa.gov/pdocs/1625260.docx> (wastewater)

⁴ In its 2016 rate filings at Docket Nos. R-2016-2538660 and C-2016-2540738, CUPA was permitted to move rates for water customers in its Penn Estates and Westgate territories toward consolidation. CUPA W St. 1 at 3-4. Similarly, rates for wastewater customers in its Penn Estates and UIP territories were moved towards consolidation. *Id.* In its 2019 rate filings at Docket Nos. R-2019-3008947 and R-2019-3008948, CUPA fully consolidated rates for water customers in its Penn Estates and Westgate territories and also consolidated rates for wastewater customers in its Penn Estates and UIP territories. CUPA W St. 1 at 4; CUPA WW St. 1 at 4.

CUPA W Exh. AWD-2. The proposed consolidation would have the reverse effect on wastewater rates because it would result in a larger increase for customers in the Penn Estates and UIP territories, who currently pay lower rates than Tamiment wastewater customers. CUPA WW Exh. AWD-2.

The OCA raised concerns, however, with the level of increases that would result from completely eliminating the subsidy between the territories.⁵ The OCA opposed these levels of increase as being inconsistent with the concept of gradualism and recommended movement toward consolidation in this rate case rather than full consolidation. *Id.* at 8-9. The proposed Settlement adopts these recommendations, first by moving Tamiment usage rates for water service approximately 50% of the way from their existing level to the consolidated rates of CUPA, with full consolidation in the Company's next case. Settlement ¶ II.E.8. This stepped approach is consistent with how rates in the Penn Estates, Westgate and UIP systems were consolidated and recognizes the appropriateness of gradualism, while also reducing the gap in rates paid by Tamiment water customers relative to customers in the consolidated systems.

For water availability rates, the Settlement would limit increases to 1.5 times the system average increase. Settlement ¶ II.E.12. As stated by OCA witness Mierzwa, “[w]hile there is no hard and fast rule with respect to applying the concept of gradualism, typically an increase of 1.5 to 2.0 times the system average increase is considered consistent with the concept of gradualism.” OCA St. 3 at 8-9. The proposed Settlement adopts this recommendation.

The concept of gradualism and what that means for specific rate increases is dependent on the facts of each case, including the cost of service study. As explained by OCA witness Mierzwa,

⁵ On the water side, this meant a rate increase of approximately 81% or 2.2 times the system average rate increase for Tamiment water customers. OCA St. 3 at 8. For wastewater, CUPA proposed a rate increase of 41% for Penn Estates and UIP customers. OCA St. 3 at 13.

a sound rate design should: “Provide stability and predictability of the rates themselves, with a minimum of unexpected changes that are seriously adverse to ratepayers or the utility (gradualism).” OCA St. 3 at 7. As discussed above, the OCA opposed the Company’s proposed move to single tariff pricing in just one rate case and the Settlement provides for a more gradual movement over two cases. This approach has been used in many cases where an acquired system’s rates differ from main rate zone rates. *See, e.g., Pa. P.U.C. v. Pennsylvania-American Water Co., R-2020-3019369 et al*, Order at 78-79 (approving a Settlement that mitigated the subsidies proposed in the rate case and moved the divisions closer to their cost to serve); *Pa. P.U.C. v. Aqua Pennsylvania, Inc., R-2018-3003558 et al*, Order at 55, 58 (“In our view, it is fair, just and reasonable for rate divisions with current rates below the cost of service to receive larger increases”)⁶; *see also Lloyd v. Pa. PUC*, 904 A.2d 1010 at 1020 (Pa. Commw. 2004); *A Guide to Utility Ratemaking*, James H. Cawley & Norman J. Kennard, Pa. P.U.C. (2018) (“This is the ratemaking principle of gradualism, counseling a slower incremental movement toward actual cost of service and the avoidance of sudden, quick increases in rates.”)⁷.

2. Conservation and Metered Rates

In the Order, the ALJ recognizes that under the proposed Settlement, for residential customers, the entire water increase will be allocated to water volumetric rates as opposed to fixed customer charges. Order at 32; Settlement ¶ II.D.12. The ALJ disagrees, however, that allocating the increase in this manner will allow customers more control over their bills on the basis that demand for water is inelastic and customers have already cut their volumetric consumption. Order at 32. This does not consider, however, that under the allocation proposed by CUPA, fixed charges

⁶ <https://www.puc.pa.gov/pcdocs/1694348.docx>

⁷ https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf

would have increased irrespective of reduced volumetric consumption. CUPA W St. 4 at 4; OCA St. 3 at 5, 9-10. As Representative Sappey identified, rate increases placed on fixed customer charges have a disproportionate and burdensome effect on low-income seniors and working families. Tr. 37.

Also, the Order does not recognize the impact of the Settlement on wastewater rate design. Wastewater customers in the consolidated Penn Estates and UIP systems are currently charged flat, unmetered rates. Wastewater customers in the Tamiment service territory are currently charged metered rates. OCA St. 3 at 11-12. As proposed by CUPA, consolidation of wastewater rates would have meant eliminating metered rates for Tamiment wastewater customers. *Id.* at 11. Instead, under the Settlement, Tamiment customers will continue to pay metered rates and provisions are in place to move Penn Estates and UIP customers from flat to metered rates in CUPA's next base rate filing. Settlement ¶¶ II.E.9, 10. This change is consistent with sound rate design and Commission policy to bill customers based on their actual use so that where customers reduce their volumetric usage, it will impact their bills. OCA St. 3 at 12; OCA St. 3SR at 9-10.

3. Low-Income Rates

In the Order, ALJ Buckley questions whether the low-income programs provided by the Settlement will help to mitigate the effect of the rate increases on consumers because they will shift costs to the remaining customer base. Order at 32. This does not recognize that CUPA's low-income water customers will benefit from a water usage rate that is discounted by 35% under the Settlement. CUPA estimated that 12% of the households it serves will be eligible for the program. CUPA W St. 4 at 6-7. The Order also does not recognize that CUPA did not propose any rate discount for its low-income wastewater customers as part of its rate filing. OCA St. 3 at 14. Under the Settlement, CUPA will propose a low-income discount for wastewater customers

in its next base rate proceeding. Settlement ¶ II.E.16. Together, these measures will provide a significant benefit because, currently, CUPA has no low-income programs available to its water and wastewater customers.

The OCA agrees with the ALJ that, by design, the revenue associated with the discount for low-income customers will be recovered from other customers. Settlement ¶¶ II.E.14-15; CUPA W St. 4 at 6. The Settlement responds to the concern about the impact of the discount on other customers by reducing the discount from 65% (originally proposed by CUPA) to 35% of the regular residential water usage rates. OCA St. 3 at 14. The Settlement also protects customers by requiring CUPA to return any surplus to customers if enrollment in the program or volumes used by participants are less than expected during the pilot phase.⁸ Further, the OCA notes that CUPA's uncollectible rate increased 473 percent in 2020 compared to the average in the 4 years 2016-2019. OCA St. 1 at 7. To the extent that the low-income programs assist customers to pay their bills, rather than being disconnected and not contributing any revenue, all CUPA customers will benefit.

Taken together, the OCA submits that the low-income provisions of the proposed Settlement will help to mitigate the impact of the rate increase on those who can least afford it and contribute to making the Settlement, as a whole, in the public interest.

4. Quality of Service

The ALJ states that the quality of service commitments in the proposed Settlement are laudable but raises a concern that because they are prospective, they do not outweigh the level of agreed upon rates. Order at 33. The ALJ also finds that the parties did not adequately respond to quality of service complaints. *Id.* at 33-35. With regard to grinder pumps, in particular, he notes

⁸ Because the low-income rate is a discount to the usage rates, assumptions need to be made about the number of customers who will participate and their usage volumes in order to set the regular and low-income rates that will recover CUPA's revenue requirement. Settlement ¶ II.E.15.

that the concern is not to explain that grinder pumps are the responsibility of the customers but that “it appears to be that sewage from CUPA’s system is backing up into the pumps and is destroying them.” Order at 34-35.

The OCA respectfully submits that there is no evidence to support a conclusion that sewage from CUPA’s system is backing up into grinder pumps. An investigation conducted in 2020 by CUPA and its contractor, Environmental Services Corporation, supported a finding that grinder pump issues during 2019 and 2020 did not result from air or other blockages causing high pressures in the Company’s low pressure force main.⁹ CUPA Statement W&WW 7-R at 11-13. Another possible cause for sewage backup is that the grinder pump failed. CUPA’s certified operator explained that the purpose of a sewer backflow/check valve is to prevent sewage from flowing back into the home when the grinder pump is not operating. CUPA W&WW St. 7-R at 11. To help avoid failures of check valves and grinder pumps, CUPA agreed to provide new and existing customers with information on operation and maintenance. Settlement ¶ II.G.25.

More generally, the OCA submits that the proposed Settlement addresses a number of quality issues. For the Penn Estates system, many complaints related to the outage in August 2020. OCA St. 4-SR at 7-8. In response, CUPA provided testimony explaining the events before, during and after the outage. CUPA W&WW St. 7-R at 14-16. The Company also explained that its contractor, GHD, evaluated the system in late 2020 and early 2021 and prepared a report providing recommendations to improve system operations to minimize loss of service. *Id.* at 20-21. The OCA’s engineer concluded:

⁹ “On July 20, 2020 CUPA and ESC investigated the areas of The Glen [in Tamiment] experiencing grinder pump issues. They found no blockages and force main pressures ranging from 5-20 PSI, which is below the operating PSI of a grinder pump. ESC released air within the low pressure force main. After releasing the air, the system pressure remained 5-20 PSI.” CUPA W&WW St. 7-R at 13. Further, at the time of the investigation in 2020, the contractor installed three new air release valves in the low pressure force main. *Id.*

Based on my review, implementation of the recommendations of the GHD Report would greatly reduce or eliminate water outages in the future.

OCA St. 4SR at 10. This is addressed in the Settlement through CUPA's commitment to investigate changes to supply and pressure to help ensure that customers will receive consistent and reasonable pressures and service will not be disrupted as it was in August 2020. Settlement ¶ II.G.24; OCA St. 4SR at 8-11.

A number of customers in the Tamiment water system raised concerns regarding rings in toilets, stained laundry, sediment in the water and damaged appliances/failing hot water heaters. OCA St. 4SR at 5. The OCA recommended that the Company should provide recent laboratory tests for hardness, total dissolved solids and sulfates for each of its wells, as a possible cause for the complaints. OCA St. 4SR at 14-15. CUPA conducted the recommended tests in the Tamiment system, however, which showed that the wells are in compliance with secondary water quality standards. CUPA W Exh. 1-T. To address another possible cause of discolored water, CUPA agreed to provide advance notice to customers regarding planned system maintenance that may discolor water, including flushing mains or switching wells. Settlement ¶ II.G.23; OCA St. 4 at 15. For Tamiment, although the ALJ contends that issues should have been addressed by the funds provided from the 2019 rate case, the OCA reiterates that the 2019 rate case addressed CUPA's existing systems only and not Tamiment.

Each of the Settlement provisions discussed above reflects the actions recommended by the OCA's engineering witness and the OCA supports them as being in the public interest, because they help to ensure that that customers will receive reasonable, adequate, reliable and uninterrupted service. The Commission's required review of adequacy of service in this rate case, under 66 Pa. C.S. § 523(a), includes balancing the instances of service problems with the need for additional revenue. *See, e.g., Pa. P.U.C. v. Twin Lakes Utilities, Inc.*, R-2019-3010958, Order at 64, 80 (Mar.

26, 2020) (recognizing quality of service, rate affordability issues and the Company's need to recover revenue in order to meet ongoing service obligations, in determining just and reasonable rates).¹⁰ As such, and in conjunction with the other conditions imposed, the OCA submits that the proposed Settlement is in the public interest.

III. CONCLUSION

For the reasons set forth above, the OCA respectfully submits that the action of the Administrative Law Judge rejecting the proposed Settlement was not proper or supported by fact. The OCA submits that the Settlement is in the public interest and should be approved.

Respectfully Submitted,



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DATE: November 16, 2021

¹⁰ <https://www.puc.pa.gov/pdocs/1659246.docx>