



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

November 19, 2021

Via Electronic Filing

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

Re: PaPUC Docket No. P-2021-3026854
Petition of The Borough of Hanover – Hanover Municipal Water Works for Approval of a
Distribution System Improvement Charge

PaPUC Docket No. C-2021-3027810
Hanover Foods Corporation v. The Borough of Hanover – Hanover Municipal Water Works

Dear Secretary Chiavetta:

We are counsel to the Borough of Hanover – Hanover Municipal Water Works in the above matter and are submitting, via electronic filing with this letter, the Joint Petition of the Borough, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and Hanover Foods Corporation for Settlement. Copies of the Joint Petition for Settlement are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable F. Joseph Brady, Administrative Law Judge (via email, w/encl.)
Nan Dunford (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
F. Joseph Brady, Presiding**

Petition of The Borough of Hanover for :
Approval of a Distribution System : **Docket No. P-2021-3026854**
Improvement Charge :

Hanover Foods Corporation v. The :
Borough of Hanover – Hanover : **Docket No. C-2021-3027810**
Municipal Water Works :

**JOINT PETITION OF THE BOROUGH OF HANOVER – HANOVER MUNICIPAL
WATER WORKS, THE BUREAU OF INVESTIGATION AND ENFORCEMENT,
THE OFFICE OF CONSUMER ADVOCATE AND HANOVER FOODS
CORPORATION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE F. JOSEPH BRADY, ADMINISTRATIVE LAW JUDGE:

This Joint Petition for Approval of Settlement (“Joint Petition”) is made and entered into by and between the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission (“I&E”), the Office of Consumer Advocate (“OCA”), Hanover Foods Corporation (“HFC”) and the Borough of Hanover – Hanover Municipal Water Works (“Hanover” or “Borough”), parties to the above captioned proceeding (hereinafter collectively referred to as “Joint Petitioners”) for the purpose of settling the proceeding under the terms and conditions set forth below. Joint Petitioners request that Administrative Law Judge F. Joseph Brady recommend approval of, and that the Public Utility Commission (“Commission”) approve, the Joint Petition.¹

¹ The Office of Small Business Advocate (“OSBA”), which intervened in the proceeding, does not oppose the Joint Petition.

I. PROCEDURAL HISTORY

1. This proceeding concerns the Petition of the Borough of Hanover for Approval of a Distribution System Improvement Charge (“DSIC”), filed with the Public Utility Commission (“Commission” or “PUC”) on June 29, 2021.

2. The Petition asks the Commission to allow the Borough to implement a DSIC to recover the costs related to the repair, replacement and improvement of eligible property. A Long-Term Infrastructure Improvement Plan (“LTIIP”) was included with the Petition as Appendix B.

3. OCA filed an Answer to the Borough’s Petition on July 19, 2021, and a Notice of Intervention and Public Statement on July 20, 2021. Separately, the OCA also filed comments to the LTIIP.

4. OSBA filed a Notice of Intervention and Public Statement on July 19, 2021.

5. HFC filed a formal Complaint, docketed at C-2021-3027810, on August 9, 2021.

6. I&E filed a Notice of Appearance on August 23, 2021.

7. By Notice dated September 8, 2021, the Commission scheduled a Call-In Telephonic Prehearing Conference for September 16, 2021, with Administrative Law Judge F. Joseph Brady presiding. Judge Brady issued a Prehearing Conference Order dated September 8, 2021, in advance of the Prehearing Conference.

8. The Call-In Telephonic Prehearing Conference was convened as scheduled on September 16, 2021. Hanover, I&E, OCA, OSBA and HFC participated in the Conference. The parties agreed to postpone the creation of a litigation schedule to facilitate settlement discussions.

9. Judge Brady issued a Prehearing Order #2, dated September 28, 2021, postponing the creation of a litigation schedule and requiring Hanover to file a status report within forty-five (45) days.

10. By email correspondence on October 28, 2021, counsel for the Borough advised Judge Brady that the Borough, I&E, OCA, OSBA and HFC had agreed to settlement terms resolving the proceeding.

II. TERMS AND CONDITIONS IN SETTLEMENT OF PROCEEDING

11. Joint Petitioners agree to the following terms and conditions in Settlement of this proceeding. The Settlement resolves all issues among all parties:

Joint Petitioners agree that the Borough's Petition should be approved and that the Borough should be allowed to implement a Distribution System Improvement Charge by filing a tariff supplement in the form attached to its Petition modified and conditioned as follows:

- a. The DSIC tariff pages will show an effective date of January 1, 2023. The initial DSIC rate will be 0.0% until Hanover has placed in service a level of plant that exceeds the level approved by the Public Utility Commission for fully projected future test year base rate recovery in the Borough's pending base rate case at Docket No. R-2021-3026116, or as otherwise directed by the Commission;
- b. Jurisdictional property, in most circumstances, will be based on physical location. The location of an upgraded distribution main, hydrant, meter, or service will determine if the cost is ascribed to non-jurisdictional or jurisdictional customers.

In all other circumstances, the Borough will apportion a percentage of cost of upgrades and replacement to facilities located within the Borough to PUC jurisdictional customers based on the allocation in the Borough's cost of service study (COSS) which was filed as Exhibit CEH-1 in Docket No. R-2021-3026116, inclusive of any modifications to that study adopted in the final Commission Order in that proceeding.

For example, if the Borough upgrades a transmission main located inside the Borough that also benefits jurisdictional customers, a portion of those upgrades would be allocated to the jurisdictional customers based on Factor 3, which utilizes inside Borough and outside Borough average daily consumption, maximum day extra capacity and fire protection ratios to allocate costs. Factor 3 allocates .6689 of costs of a transmission main to jurisdiction customers and .3311 to inside Borough customers.

In the supporting calculations filed with quarterly DSIC updates, Hanover will show how costs were allocated between non-jurisdictional and jurisdictional customers and specify whether the allocation was based on physical location or a factor allocation from the COSS and, if the latter, which factor allocation(s).

- c. Section 2.B.2 of the DSIC tariff supplement will be revised to state as follows:

2. Pre-tax return: The pre-tax return shall be calculated using the 0% statutory state and federal income tax rates applicable to the Borough, the Borough's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Borough's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission as modified to reflect the 0% tax liability of the municipality.

In the supporting calculations filed with quarterly DSIC updates, the Borough will include a statement that "As a municipality, the applicable state and federal income tax rates for calculating pre-tax return (PTRR) are 0%."

- d. The DSIC tariff supplement will remove the reference to the State Tax Adjustment Surcharge from Section 2.C.
- e. If the Borough claims any shared plant in a DSIC filing, the Borough agrees to provide a schedule that shows the total and amount of plant, annual depreciation expense and return dollars for each plant addition allocated to outside customers in each DSIC filing.

A form of tariff supplement modified to reflect the foregoing is attached hereto as Appendix A.

III. JUSTIFICATION AND SUPPORT FOR SETTLEMENT

- 12. It is the stated policy of the Commission to encourage parties to resolve contested

proceedings through settlement.² Settlements lessen the time and expense of litigating a case and, thus, directly benefit all parties concerned. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.³ Hanover, I&E, OCA and HFC submit that the resolution of issues as presented in this settlement will further the public interest. Their respective Statements in Support of the Settlement are attached as Attachments B, C, D and E.

IV. CONDITIONS OF SETTLEMENT

13. This Joint Petition is proposed to resolve all issues in the instant matter and, except as set forth above, is made without any admission against or prejudice to any positions which any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by any one of the Joint Petitioners as provided below. Except as set forth above, Joint Petitioners agree that this Joint Petition shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

14. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein without modification. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn upon written notice to the Commission and all parties within three (3) business days by any one of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the

² 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

³ *Pa. P.U.C. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103, Opinion and Order entered July 14, 2011, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa. P.U.C. v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). See also *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Commission does not approve the Joint Petition or any Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective right to fully litigate the case, including producing witnesses, conducting full cross-examination and presenting briefs and legal argument.

15. Joint Petitioners will make reasonable, good faith efforts to obtain approval of the Joint Petition by the Administrative Law Judge and the Commission without modification. If the Administrative Law Judge in his Recommended Decision recommends that the Commission adopt the Joint Petition without modification as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their right to file Exceptions with respect to any modifications to the terms and conditions of this Joint Petition, or any additional matters, proposed by Administrative Law Judge Brady in his Recommended Decision. The Joint Petitioners reserve their right to file Reply Exceptions to any Exceptions which may be filed whether by a Joint Petitioner or other party to the proceeding.

WHEREFORE the Borough of Hanover – Hanover Municipal Water Works, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and Hanover Foods Corporation request that Administrative Law Judge F. Joseph Brady recommend approval of, and that the Public Utility Commission approve, this Joint Petition for Settlement at PUC Dockets Nos. P-2021-3026854 and C-2021-3027810 and order as follows:

(a) That the Joint Petition for Settlement, filed on November 19, 2021, by the Borough of Hanover – Hanover Municipal Water Works, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and Hanover Foods Corporation, at PUC Dockets Nos. P-2021-3026854 and C-2021-3027810, including all terms and conditions thereof, is approved without modification.

(b) That the Petition for Approval of a Distribution System Improvement Charge filed by the Borough on June 29, 2021, is approved, subject to following conditions, consistent with the Joint Petition for Settlement, and the Borough is granted special permission to file a tariff supplement in the form attached hereto as Appendix A on one day's notice following entry of a Commission Order:

- a. The DSIC tariff pages will show an effective date of January 1, 2023. The initial DSIC rate will be 0.0% until Hanover has placed in service a level of plant that exceeds the level approved by the Public Utility Commission for fully projected future test year base rate recovery in the Borough's pending base rate case at Docket No. R-2021-3026116, or as otherwise directed by the Commission;
- b. Jurisdictional property, in most circumstances, will be based on physical location. The location of an upgraded distribution main, hydrant, meter, or service will determine if the cost is ascribed to non-jurisdictional or jurisdictional customers.

In all other circumstances, the Borough will apportion a percentage of cost of upgrades and replacement to facilities located within the Borough to PUC jurisdictional customers based on the allocation in the Borough's cost of service study (COSS) which was filed as Exhibit CEH-1 in Docket No. R-2021-3026116, inclusive of any modifications to that study adopted in the final Commission Order in that proceeding.

For example, if the Borough upgrades a transmission main located inside the Borough that also benefits jurisdictional customers, a portion of those upgrades would be allocated to the jurisdictional customers based on Factor 3, which utilizes inside Borough and outside Borough average daily consumption, maximum day extra capacity and fire protection ratios to allocate costs. Factor 3 allocates .6689 of costs of a transmission main to jurisdiction customers and .3311 to inside Borough customers.

In the supporting calculations filed with quarterly DSIC updates, Hanover will show how costs were allocated between non-jurisdictional and jurisdictional customers, and specify whether the allocation was based on physical location or a factor allocation from the COSS and, if the latter, which factor allocation(s).

- c. Section 2.B.2 of the DSIC tariff supplement will be revised to state as follows:

2. Pre-tax return: The pre-tax return shall be calculated using the 0% statutory state and federal income tax rates applicable to the Borough, the Borough's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Borough's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission as modified to reflect the 0% tax liability of the municipality.

In the supporting calculations filed with quarterly DSIC updates, the Borough will include a statement that "As a municipality, the applicable state and federal income tax rates for calculating pre-tax return (PTRR) are 0%."

- d. The DSIC tariff supplement will remove the reference to the State Tax Adjustment Surcharge from Section 2.C.
 - e. If the Borough claims any shared plant in a DSIC filing, the Borough agrees to provide a schedule that shows the total and amount of plant, annual depreciation expense and return dollars for each plant addition allocated to outside customers in each DSIC filing.
- (c) That the proceeding at PaPUC Docket No. P-2021-3026854 is terminated and marked closed.
- (d) That Complaint of Hanover Foods Corporation at C-2021-3027810 be marked as satisfied and closed consistent with this Joint Petition for Settlement.

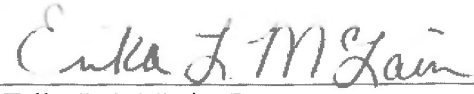
Respectfully submitted,

**THE BOROUGH OF HANOVER – HANOVER
MUNICIPAL WATER WORKS**

By: 
Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
tniesen@tntlawfirm.com

*Counsel for The Borough of Hanover – Hanover
Municipal Water Works*

**BUREAU OF INVESTIGATION AND
ENFORCEMENT**

By: 
Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ermclain@pa.gov

*Counsel for the Bureau of Investigation
and Enforcement*

OFFICE OF CONSUMER ADVOCATE

By: _____
Erin L. Gannon
Senior Assistant Consumer Advocate
Laura Antinucci
Assistant Consumer Advocate
Office of Consumer Advocate
EGannon@paoca.org
LAntinucci@paoca.org

Counsel for the Office of Consumer Advocate

HANOVER FOODS CORPORATION

By: _____
Charis Mincavage, Esquire
Kenneth R. Stark, Esquire
McNees Wallace & Nurick, LLC
CMincavage@mcneeslaw.com
KStark@mcneeslaw.com

Counsel for Hanover Foods Corporation

Dated: November 19, 2021

Respectfully submitted,

**THE BOROUGH OF HANOVER – HANOVER
MUNICIPAL WATER WORKS**

By: _____
Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
tniesen@tntlawfirm.com


*Counsel for The Borough of Hanover – Hanover
Municipal Water Works*

**BUREAU OF INVESTIGATION AND
ENFORCEMENT**

By: _____
Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ermclain@pa.gov

*Counsel for the Bureau of Investigation
and Enforcement*

OFFICE OF CONSUMER ADVOCATE

By:  _____
Erin L. Gannon
Senior Assistant Consumer Advocate
Laura Antinucci
Assistant Consumer Advocate
Office of Consumer Advocate
EGannon@paoca.org
LAntinucci@paoca.org

Counsel for the Office of Consumer Advocate

HANOVER FOODS CORPORATION

By: _____
Charis Mincavage, Esquire
Kenneth R. Stark, Esquire
McNees Wallace & Nurick, LLC
CMincavage@mcneeslaw.com
KStark@mcneeslaw.com

Counsel for Hanover Foods Corporation

Dated: November 19, 2021

Respectfully submitted,

**THE BOROUGH OF HANOVER – HANOVER
MUNICIPAL WATER WORKS**

By: _____

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
tniesen@tntlawfirm.com

*Counsel for The Borough of Hanover – Hanover
Municipal Water Works*

OFFICE OF CONSUMER ADVOCATE

By: _____

Erin L. Gannon
Senior Assistant Consumer Advocate
Laura Antinucci
Assistant Consumer Advocate
Office of Consumer Advocate
EGannon@paoca.org
LAntinucci@paoca.org

Counsel for the Office of Consumer Advocate

Dated: November 19, 2021

**BUREAU OF INVESTIGATION AND
ENFORCEMENT**

By: _____

Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ermclain@pa.gov

*Counsel for the Bureau of Investigation
and Enforcement*

HANOVER FOODS CORPORATION

By:  _____

Charis Mincavage, Esquire
Kenneth R. Stark, Esquire
McNees Wallace & Nurick, LLC
CMincavage@mcneeslaw.com
KStark@mcneeslaw.com

Counsel for Hanover Foods Corporation

APPENDIX A
Settlement Supplement

BOROUGH OF HANOVER
HANOVER MUNICIPAL WATER WORKS
RATES, RULES AND REGULATIONS
GOVERNING THE DISTRIBUTION OF WATER
IN
THE TOWNSHIP OF PENN IN YORK COUNTY
AND
THE TOWNSHIP OF HEIDELBERG IN YORK COUNTY
AND
THE TOWNSHIP OF CONEWAGO IN ADAMS COUNTY
AND
THE BOROUGH OF McSHERRYSTOWN IN ADAMS COUNTY
PENNSYLVANIA

ISSUED: _____, 2022

EFFECTIVE: January 1, 2023

BY: Nan Dunford, Borough Manager
Borough of Hanover
Hanover Municipal Water Works
44 Frederick Street
Hanover, Pennsylvania 17331

NOTICE

THIS SUPPLEMENT MAKES CHANGES TO EXISTING RATES
(see Page No. 2)

LIST OF CHANGES MADE BY THIS SUPPLEMENT

Changes: This supplement implements a Distribution System Improvement Charge (DSIC) for the recovery of the cost of distribution system improvement projects.

TABLE OF CONTENTS

	<u>Page</u>
Title Page	1 Supplement No. ___
List of Changes Made by This Supplement	2 _____ Revised
Table of Contents	3 _____ Revised
Schedule of Meter Rates	4 Thirteenth Revised
Intentionally Left Blank	5 Fourth Revised
Schedule of Fire Service Rates	6 Thirteenth Revised
Intentionally Left Blank	7 Seventh Revised
Rules and Regulations:	
1. Definitions	8 – 9 a Original
2. Filing, Posting and Effect	9b Original
3. Application for Service	9b-10 Original
4. Connections to Water Supply System	10 Original
5. Regulation of Supply	11 Original
6. Interruption, Discontinuance or Termination of Service	12 Third Revised – 12a First Revised
7. Bills and penalties	12a-13a First Revised
8. Metered Service	14 Third Revised
9. Meter Installations	15 Third Revised
10. Fire Service	15 Third Revised
11. Extension of Mains	15 Third Revised
11. Extension of Mains	16-18 Original
11. Extension of Mains	19 First Revised
13-16. Water Conservation Contingency Plan	20-22 Original
__-__ . Distribution System Improvement Charge	__-__ Original

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

In addition to the net charges provided for in this Tariff, a charge of 0% will apply consistent with the Commission Order dated _____ at Docket No. _____, approving the DSIC.

1. General Description

A. Purpose: To recover the reasonable and prudent costs incurred to repair, improve, or replace eligible property which is completed and placed in service and recorded in the individual accounts, as noted below, between base rate cases and to provide the Borough with the resources to accelerate the replacement of aging infrastructure, to comply with evolving regulatory requirements and to develop and implement solutions to regional supply problems.

The costs of extending facilities to serve new customers are not recoverable through the DSIC.

Borough projects receiving PENNVEST funding or using PENNVEST surcharges are not DSIC-eligible property to the extent of the PENNVEST funding or surcharge.]

B. Eligible Property: The DSIC-eligible property will consist of the following:

- Services (account 333000), meters (account 334100) and hydrants (account 335000) installed as in-kind replacements for customers;
- Mains and valves (account 331800) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded to meet under 52 Pa Code § 65 (relating to water service);
- Main extensions (account 331800) installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the Borough;
- Main cleaning and relining (account 331800) projects; and
- Unreimbursed costs related to highway relocation projects where the Borough must relocate its facilities; and
- Other related capitalized costs.

C. Effective Date: The DSIC will become effective January 1, 2023.

2. Computation of the DSIC

A. Calculation: The DSIC shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Borough' rates or rate base. The initial DSIC, effective January 1, 2023, shall be 0%. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

Hanover Municipal Water Works

Effective Date of Change	Date to which DSIC-Eligible Plant Additions Reflected
April 1	December 1 through February 28
July 1	March 1 through May 31
October 1	June 1 through August 31
January 1	September 1 through November 30

B. Determination of Fixed Costs: The fixed costs of eligible distribution system improvements projects will consist of depreciation and pre-tax return, calculated as follows:

1. Depreciation: The depreciation expense shall be calculated by applying the annual accrual rates employed in the Borough's most recent base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded to the original cost of DSIC-eligible property.

2. Pre-tax return: The pre-tax return shall be calculated using the 0% statutory state and federal income tax rates applicable to the Borough, the Borough's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Borough's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission as modified to reflect the 0% tax liability of the municipality.

C. Application of DSIC: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for service under the Borough's otherwise applicable rates and charges, excluding amounts billed for public fire protection service. To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Borough's projected revenue for distribution service (including all applicable clauses and riders) for the quarterly period during which the charge will be collected, exclusive of revenues from public fire protection service.

D. Formula: The formula for calculation of the DSIC is as follows:

$$DSIC = \frac{(DSI * PTRR) + Dep}{PQR} + \frac{e}{PQR}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation.

PTRR = Pre-tax return rate applicable to DSIC-eligible property.

Dep = Depreciation expense related to DSIC-eligible property.

e = Amount calculated (+/-) under the annual reconciliation feature or Commission audit, as described below.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from existing customers plus netted

revenue from any customers which will be gained or lost by the beginning of the applicable service period.

Quarterly revenues will be determined on the basis of one-fourth of projected annual revenues.

3. Quarterly Updates: Supporting data for each quarterly update will be filed with the Commission and served upon the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

4. Customer Safeguards

A. Cap: The DSIC is capped at 5.0% of the amount billed to customers for distribution service (including all applicable clauses and riders) as determined on an annualized basis.

B. Audit/Reconciliation: The DSIC is subject to audit at intervals determined by the Commission. Any cost determined by the Commission not to comply with any provision of 66 Pa C.S. §§ 1350, *et seq.*, shall be credited to customer accounts. The DSIC is subject to annual reconciliation based on a reconciliation period consisting of the twelve months ending December 31 of each year. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one-year period commencing on April 1 of each year. If DSIC revenues exceed DSIC-eligible costs, such over-collections will be refunded with interest. Interest on over-collections and credits will be calculated at the residential mortgage lending specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. §§ 101, *et seq.*) and will be refunded in the same manner as an over-collection. The Borough is not permitted to accrue interest on under collections.

C. New Base Rates: The DSIC will be reset at zero upon application of new base rates to customer billings that provide for prospective recovery of the annual costs that had previously been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions that have not previously been reflected in the Borough's rates or rate base will be reflected in the quarterly updates of the DSIC.

D. Customer Notice: Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

E. All customer classes: The DSIC shall be applied equally to all customer classes.

F. Earning Reports: The DSIC will also be reset at zero if, in any quarter, data filed with the Commission in the Borough's then most recent Annual or Quarterly Earnings reports show that the Borough would earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the pre-tax return section. The Borough shall file a tariff supplement implementing the reset to zero due to overearning on one-day's notice and such supplement shall be filed simultaneously with the filing of the most recent Annual or Quarterly

Earnings reports indicating that the Borough has earned a rate of return that would exceed the allowable rate of return used to calculate its fixed costs.

G. Residual E-Factor Recovery Upon Reset To Zero: The Borough shall file with the Commission interim rate revisions to resolve the residual over/under collection or E-factor amount after the DSIC rate has been reset to zero. The Borough can collect or credit the residual over/under collection balance when the DSIC rate is reset to zero. The Borough shall refund any overcollection to customers and is entitled to recover any undercollections as set forth in Section 4.B. Once the Borough determines the specific amount of the residual over or under collection amount after the DSIC rate is reset to zero, the Borough shall file a tariff supplement with supporting data to address that residual amount. The tariff supplement shall be served upon the Commission's Bureau of Investigation and Enforcement, the Bureau of Audits, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the supplement.

H. Public Fire Protection: The DSIC will not apply to public fire protection customers.

APPENDIX B
Statement in Support of
The Borough of Hanover – Hanover Municipal
Water Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
F. Joseph Brady, Presiding**

**Petition of The Borough of Hanover for
Approval of a Distribution System
Improvement Charge** :
: **Docket No. P-2021-3026854**
:

**Hanover Foods Corporation v. The
Borough of Hanover – Hanover
Municipal Water Works** :
: **Docket No. C-2021-3027810**
:

**STATEMENT IN SUPPORT OF
THE BOROUGH OF HANOVER – HANOVER MUNICIPAL WATER WORKS**

TO ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:

AND NOW, comes the Borough of Hanover – Hanover Municipal Water Works (“Borough”), by its attorneys, and submits the following statement in support of the Joint Petition for Settlement (“Settlement Petition”) filed with the Public Utility Commission (“Commission”) by the Borough, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”) and Hanover Foods Corporation (“HFC”).¹

Introduction

This proceeding concerns the Borough’s Petition for Approval of a Distribution System Improvement Charge (“DSIC”). The Petition asks the Commission to allow the Borough to implement a DSIC to recover the costs related to the repair, replacement and improvement of eligible property. A Long-Term Infrastructure Improvement Plan (“LTIIIP”) was included with the Petition as Appendix B.

The Settling Parties have agreed that this DSIC petition proceeding can be settled without further litigation under the terms set forth in the Settlement Petition.²

The Proposed Settlement is Consistent with Commission Policy and Regulations and In the Public Interest. It Minimizes Cost Prohibitive Litigation and Administrative Burden.

It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.³ Settlements lessen the time and expense of litigating a case⁴ and, at the same time, conserve administrative hearing resources. This directly benefits all parties concerned.⁵

The Settlement Petition proposes the resolution of all issues in this proceeding. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.⁶ The benchmark for

¹ The Borough, I&E, OCA and HFC are referred to herein, collectively, as the “Settling Parties.”

² The Office of Small Business Advocate, which intervened in the proceeding, does not oppose the Settlement Petition.

³ 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

⁴ The substantial cost of litigation avoided through settlement includes the cost of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the cost of preparing and serving briefs, reply briefs, exceptions and replies to exceptions, together with the cost of briefs and reply briefs necessitated by any appeal of the Commission’s decision.

⁵ *Pa. P.U.C. v. Buck Hill Water Company*, Docket No. R-2019-3007103, Recommended Decision of Administrative Law Judge F. Joseph Brady dated May 29, 2019 (“*Recommended Decision of ALJ Brady*”), mimeo at 9-10; *Pa. P.U.C. v. Timberlee Valley Sanitation Company*, Docket No. R-2018-3003104, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated October 16, 2018, mimeo at 10; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2017-2631441, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated May 16, 2018, mimeo at 23; *Pa. P.U.C. v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013, mimeo at 11; *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011 (“*Recommended Decision of ALJ Barnes*”), mimeo at 9; *Pa. P.U.C. v. Reynolds Disposal Company*, Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011, mimeo at 12; *Pa. P.U.C. v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebour dated March 2, 2010, mimeo at 11; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010, mimeo at 5.

⁶ *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Pa. P.U.C. v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest.⁷

The Settlement Petition is in the public interest because it (a) minimizes cost-prohibitive litigation and administrative burden; (b) addresses, through the participation of I&E, OCA, OSBA and HFC, ratepayer questions concerning the DSIC; and (c) provides the Borough with the opportunity to implement a statutorily permitted rate mechanism. Each of the foregoing considerations furthers the public interest in settlement of proceedings.⁸

Avoidance of litigation costs as a result of settlement is especially significant and important to the Borough and, we submit, also important to rate paying customers as the cost of litigation may ultimately be reflected in higher rates for water service. The avoidance of further litigation expense is a recognized public interest benefit of settlement.

The Information Submitted by the Borough Supports the Settlement

Section 1353 of the Public Utility Code, 66 Pa. C.S. § 1353, provides that a water utility may petition the Commission for approval of the establishment of a DSIC “to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.”

The Code provides a list of information that shall be included with a DSIC petition. The list includes an initial tariff that complies with the model tariff adopted by the Commission,

⁷ *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa.P.U.C. v. CS Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991).

⁸ *See, for example, Recommended Decision of ALJ Barnes*, mimeo at 9 – 10 wherein Judge Barnes concludes that the joint petition in settlement of a water rate proceeding is in the public interest because it (a) minimizes cost prohibitive litigation and administrative burden; (b) recognizes ratepayers’ concerns; and (c) provides [the utility] with additional and necessary cash flow.

testimony/affidavits/exhibits demonstrating that the DSIC is in the public interest and will facilitate continued provision and maintenance of adequate, efficient, safe, reliable and reasonable service and an LTIP.

The Borough provided the required information with its Petition. A tariff supplement that complies with the model tariff was provided as Appendix A to the DSIC Petition.⁹ Notably, the supplement includes the consumer protections required by Section 1358. Statements of testimony of Harold Walker, III, and Michael J. Mehaffey in support of the DSIC were included as Appendices C and D to the DSIC Petition, respectively.¹⁰ An LTIP was included as Appendix B.¹¹

In support of its DSIC Petition, the Borough explained that it is committed to providing and maintaining service to its customers in a safe, reliable, and economic manner and submitted that the DSIC is appropriate and in the public interest because it will allow the Borough to initiate the timely recovery of the costs it incurs between base rate proceedings to address and make necessary repairs, replacements, and improvements to aging existing system infrastructure, while, at the same time, accelerating the repair and replacement of such infrastructure and augmenting prudent capital investment.¹²

With approval of the DSIC mechanism, the Borough will accelerate, as explained in the LTIP, the repair, improvement, and replacement of its system. Initial intent is to accelerate actual capital investment to \$2.896 million per year, on average, to drive investment closer to an 80-100 year replacement life cycle for the distribution infrastructure. Significant investment in meter

⁹ Borough of Hanover Exhibit 1, Appendix A.

¹⁰ Borough of Hanover Exhibit 1, Appendices C and D, respectively.

¹¹ Borough of Hanover Exhibit 1, Appendix B.

¹² Borough of Hanover Exhibit 1, Paragraph 11.

technology upgrades (AMR/AMI) may also occur.¹³

The Borough also believes that approval of the DSIC will allow the Borough to attract lower cost capital which ultimately will be reflected in rates paid by its customers. The Borough's DSIC will ensure and facilitate the continued provision of adequate, safe, and reasonable service to Hanover's outside Borough customers and will further the public interest.¹⁴

Settlement Terms

Effective Date of January 1, 2023

The Borough proposed in its DISC Petition that the initial DSIC rate would be set at 0.0% to reflect the ongoing base rate proceeding at Docket No. R-2021-3026116 and that the Borough would not recover any costs associated with infrastructure replacement through the DSIC until it has placed in service a level of DSIC-eligible plant that exceeds the level approved by the Commission for fully projected future test year base rate recovery in the pending base rate case, or as otherwise directed by the Commission.¹⁵

The Settling Parties considered the foregoing and found it reasonable and appropriate. The Settlement Petition provides that the DSIC tariff pages to be filed upon Commission approval of the settlement will show an effective date of January 1, 2023.¹⁶ Although the settlement supplement may be filed upon approval of the settlement, the initial DSIC rate will be 0.0% until the Borough has placed in service a level of plant that exceeds the level approved by the Commission for the fully

¹³ Borough of Hanover Exhibit 1, Paragraph 12.

¹⁴ Borough of Hanover Exhibit 1, Paragraph 13.

¹⁵ Borough of Hanover Exhibit 1, Paragraph 7.

¹⁶ The pending base rate proceeding is based on a fully projected future test year of calendar 2022. The effective date of January 1, 2023, for the DSIC settlement supplement is the first day after the end of the fully projected future test year.

projected future test year in the pending base rate proceeding, or as otherwise directed by the Commission.

The settlement term effectively coordinates the implementation of the DSIC with the determination of plant in service in the base rate proceeding. The Borough will not start the DSIC until after the conclusion of the fully projected future test year when the Borough has a level of plant in service that exceeds the level determined in the base rate proceeding. The Borough submits that the provisions for implementing the DSIC are reasonable and appropriate.

Jurisdictional Property

The Borough provides water service Outside the Borough limits and Inside the Borough limits. Only Outside Borough service is subject to Commission regulation. Addressing concerns that the DSIC be structured to exclude costs for service to Inside Borough customers, the Settlement Agreement recognizes that, in most circumstances, the determination of Commission jurisdictional DSIC-eligible property used for Outside Borough service will be based on physical location. The location of an upgraded distribution main, hydrant, meter, or service will determine if the cost is ascribed to non-jurisdictional or jurisdictional service.

In all other circumstances, the Borough will apportion a percentage of cost of upgrades and replacement of facilities located within the Borough to Commission jurisdictional customers based on the allocation in the Borough's cost of service study (COSS) which was filed as Exhibit CEH-1 in Docket No. R-2021-3026116, inclusive of any modifications to that study adopted in the final Commission Order in that proceeding.

For example, if the Borough upgrades a transmission main located inside the Borough that also benefits jurisdictional customers, a portion of those upgrades would be allocated to the

jurisdictional customers based on Factor 3, which utilizes Inside Borough and Outside Borough average daily consumption, maximum day extra capacity and fire protection ratios to allocate costs. Factor 3 allocates .6689 of costs of a transmission main to jurisdiction customers and .3311 to Inside Borough customers.

To confirm the foregoing, the Borough agrees that, in the supporting calculations filed with quarterly DSIC updates, the Borough will show how costs were allocated between non-jurisdictional and jurisdictional customers and specify whether the allocation was based on physical location or a factor allocation from the COSS and, if the latter, which factor allocation(s). Additionally, if the Borough claims any shared plant in a DSIC filing, the Borough agrees to provide a schedule that shows the total and amount of plant, annual depreciation expense and return dollars for each plant addition allocated to outside customers.

The foregoing addresses a matter of jurisdictional import creating a framework for assuring that the DSIC will not include recovery of the cost of providing Inside Borough service. The Borough submits that the negotiated terms for separating jurisdictional and non-jurisdictional plant are reasonable and appropriate and accepts them in settlement of the proceeding.

Pre-Tax Return and State Tax Adjustment Surcharge

The Borough does not pay federal or state income taxes. Accordingly, the Settling Parties have agreed in settlement that Section 2.B.2 of the proposed DSIC tariff supplement should be modified with the certain edits which are shown below in red type:

2. Pre-tax return: The pre-tax return shall be calculated using the **0%** statutory state and federal income tax rates **applicable to the Borough**, the Borough's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Borough's last fully litigated base rate proceeding for

which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission **as modified to reflect the 0% tax liability of the municipality.**

The Settlement Agreement also provides that, in the supporting calculations filed with quarterly DSIC updates, the Borough will include a statement that “As a municipality, the applicable state and federal income tax rates for calculating pre-tax return (PTRR) are 0%.”

In further recognition of the fact that the Borough does not pay state taxes, the Settling Parties have also agreed that Section 2.C of the DSIC tariff supplement should be modified to remove the reference to the State Tax Adjustment Surcharge.

The Borough submits that the modifications to the proposed DSIC tariff supplement are reasonable and appropriate as they recognize the reality that the Borough does not pay federal or state taxes. The Borough accepts the modifications in settlement of the proceeding.

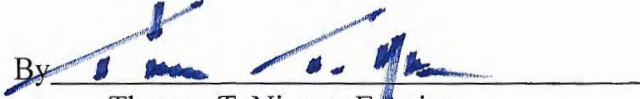
Conclusion

The Settlement Petition is the result of arms’ length negotiation between the Borough, I&E, OCA and HFC. All matters of interest are addressed through the settlement and the cost and uncertainty of litigation are avoided while allowing the Borough to implement a rate mechanism allowed by statute. The Borough submits that the Settlement Petition is reasonable and in the public interest and should be approved without modification.

WHEREFORE the Borough of Hanover – Hanover Municipal Water Works respectfully requests that Administrative Law Judge F. Joseph Brady and the Public Utility Commission accept the foregoing in support of the Joint Petition for Settlement and further that Administrative Law

Judge Brady recommend approval of, and the Public Utility Commission approve, the Joint Petition for Settlement.

Respectfully submitted,

By 

Thomas T. Niesen, Esquire
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101

*Attorneys for
The Borough of Hanover – Hanover Municipal
Water Works*

Dated: November 19, 2021

APPENDIX C
Statement in Support of the
Bureau of Investigation and Enforcement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of The Borough of Hanover for :
Approval of a Distribution System : Docket No. P-2021-3026854
Improvement Charge :

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE F. JOSEPH BRADY:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Erika L. McLain, hereby respectfully submits that the terms and conditions of the foregoing *Joint Petition For Settlement* (“Joint Petition” or “Settlement”) are in the public interest and represent a fair, just, reasonable and equitable balance of the interests of the Borough of Hanover – Hanover Municipal Water Works (“Hanover” or “Borough”) and its customers. I&E has a statutory obligation to protect the public interest in rate proceedings and to enforce the Public Utility Code,¹ and I&E avers that the terms of this Settlement comport with those obligations. The parties to this Settlement have participated in settlement discussions. The discussions have culminated in instant Settlement. The request for approval of the *Joint Petition for Settlement* is based on I&E's conclusion that the Settlement meets all the legal and regulatory standards necessary for approval. In support of this position, I&E respectfully submits the following:

¹ 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

I. INTRODUCTION

1. On June 29, 2021, Hanover filed with the Commission a Petition for Approval of a Distribution System Improvement Charge (“DSIC”).

2. On June 19, 2021, the Office of Consumer Advocate (“OCA”) filed an Answer to the Borough’s Petition and on July 20, 2021 the OCA filed a Notice of Intervention and Public Statement.

3. On July 19, 2021, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement.

4. On August 9, 2021, Hanover Foods Corporation (“Hanover Foods”) filed a formal Complaint.

5. I&E filed its Notice of Appearance on August 23, 2021.

6. On September 8, 2021, Administrative Law Judge F. Joseph Brady (“ALJ Brady”) issued a Prehearing Conference Notice indicating a Prehearing Conference had been scheduled for September 15, 2021 at 10:00am.

7. I&E, the Borough, OCA, OSBA and Hanover foods participated in the Prehearing Conference in which all parties agreed to postpone the creation of a litigation schedule to facilitate settlement discussions.

8. On September 28, 2021, ALJ Brady issued Prehearing Order #2 in which he required Hanover to file a status report within forty-five days.

9. On October 28, 2021, Hanover notified ALJ Brady that the parties had agreed to settlement terms to resolve the proceeding.

II. TERMS AND CONDITIONS OF THE SETTLEMENT

10. “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”² The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”³ I&E is of the opinion that the terms and conditions of the Joint Petition are in the public interest. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJ and the Commission without modification:

A. DSIC EFFECTIVE DATE (¶ 1.a.)

The Settlement indicates that the DSIC tariff pages will show an effective date of January 1, 2023. The initial DSIC rate will be 0.0% until Hanover has placed in service a level of plant that exceeds the level approved by the Public Utility Commission for fully projected future test year base rate recover in the Borough’s pending base rate case or as otherwise directed by the Commission. This settlement term is in the public interest because it prevents Hanover from over recovering on plant not in use at the beginning of the test year because the DSIC cannot begin until the end of the fully projected future test year plant is in place.

B. PRE-TAX RETURN (¶ 1.c.)

The Settlement Petition clarifies that the Borough’s pre-tax return shall be calculated using the 0% statutory state and federal income tax rates applicable to the Borough. Furthermore, in the supporting calculations filed with quarterly DSIC updates, the Borough will include a statement that “As a municipality, the applicable state and federal income tax

² *Pa. PUC v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

³ *Pa. PUC v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

rates for calculating pre-tax return are 0%.” This is within the public interest because it will make clear the Hanover’s absence of a gross-up for income taxes in its calculation of the pre-tax return portion of the DSIC to represent the 0% tax liability for municipalities.

C. SHARED PLANT (§ 1.e.)

If the Borough claims any shared plant in a DSIC filing, the Borough agrees to provide a schedule that shows the total and amount of plant, annual depreciation expense and return dollars for each plant addition allocated to outside customers in each DSIC filing. It is correct and appropriate and certainly within the public interest for the Borough to reflect data that is shared between jurisdictional and non-jurisdictional customers.

III. CONCLUSION

11. Based on I&E’s analysis of the Settlement terms, acceptance of this proposed Joint Petition is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding, especially in recognition of the fact that the microgrid issue cannot be resolved in the instant proceeding at this time.

12. I&E further submits that acceptance of the foregoing Settlement Agreement will negate the need to engage in additional litigation including the preparation of multiple levels of testimony as well as Main Briefs, Reply Briefs, Exceptions and Reply Exception. The avoidance of further rate case expense by settlement of these provisions in this proceeding best serves the interests of the Company and its customers.

13. The Settlement Agreement is conditioned upon the Commission’s approval of all terms and conditions contained therein and should the Commission fail to grant such

approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by I&E, or any of the signatories.

14. If the ALJ recommends that the Commission adopt the Settlement Agreement as proposed, I&E has agreed to waive the right to file Exceptions. However, I&E has not waived its rights to file Exceptions with respect to any modifications to the terms and conditions of the Settlement Agreement, or any additional matters, that may be proposed by the ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed by any active party to this proceeding.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the *Joint Petition For Settlement* as being in the public interest and respectfully requests that Administrative Law Judge F. Joseph Brady recommend, and the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,



Erika L. McLain
Prosecutor
PA Attorney ID No. 320526

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-6170

Dated: November 19, 2021

APPENDIX D
Statement in Support of the
Office of Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Borough of Hanover –	:	
Hanover Municipal Waterworks for	:	Docket No. P-2021-3026854
Approval of a Distribution System	:	
Improvement Charge	:	

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Settlement (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission). This request is based upon the OCA’s conclusion that the proposed Settlement is in the public interest and is in the interest of the jurisdictional customers of Borough of Hanover – Hanover Municipal Waterworks (Hanover or the Borough).

I. INTRODUCTION

On June 29, 2021, Borough of Hanover – Hanover Municipal Waterworks filed a Petition for Approval of a Distribution System Improvement Charge (DSIC) for its water operations (Petition) and a proposed DSIC tariff, pursuant to 66 Pa. C.S. § 1353. Through its Petition, Hanover sought permission to implement a surcharge of up to 5% of the amount billed to customers. Hanover serves 10,969 outside-Borough water customers, of which 10,285 are residential, in Penn Township and Heidelberg Township, York County, and Conewago Township and McSherrystown Borough in Adams County.

The Office of Small Business Advocate (OSBA) filed a Notice of Intervention on July 19, 2021. On the same date, the OCA filed an Answer to the Borough's Petition. On July 20, 2021, the OCA filed a Notice of Intervention. Hanover Foods Corporation filed a Formal Complaint on August 9, 2021, docketed at C-2021-3027810. On August 23, 2021, the Bureau of Investigation & Enforcement (I&E) filed a Notice of Intervention.

The matter was assigned to the Office of Administrative Law Judge and subsequently assigned to Administrative Law Judge F. Joseph Brady (ALJ Brady). On September 8, 2021, a Notice was issued setting a Prehearing Conference for this matter on September 16, 2021. The Prehearing Conference was subsequently rescheduled to September 15, 2021.

The OCA also notes that Hanover attached a proposed Long Term Infrastructure Improvement Plan (LTIIP) as Appendix B to the Petition. Pursuant to the Commission's regulations addressing initial LTIIPs, 52 Pa. Code §§ 121.1-121.8, the OCA filed Comments on the proposed LTIIP on July 19, 2021. The proposed LTIIP was approved by Commission by Order entered on November 18, 2021.

The parties participated in discovery and settlement discussions and the Borough, OCA, I&E, OSBA and Hanover Foods and reached a settlement agreement addressing all pending issues.¹

The OCA submits this Statement in Support to provide its views on why the proposed Settlement is in the public interest and should be approved.

II. TERMS AND CONDITIONS OF JOINT PETITION FOR SETTLEMENT

The terms of the proposed Settlement address:

¹ The OSBA does not oppose the Settlement.

Settlement ¶ 11(a): Effective Date/Initial Rate

Under the terms of the proposed Settlement, the DSIC will not take effect until January 1, 2023. Originally, Hanover had proposed to implement the DSIC on November 1, 2021, at an initial rate of 0.0%. Petition at 3. The Borough proposed that it would not implement a non-zero DSIC rate until it has placed in service a level of plant that exceeds the level approved by the Commission for fully projected future test year base rate recovery in the Borough's pending base rate case, or as otherwise directed by the Commission. *Id.* at 3-4. The OCA agrees that no DSIC should be charged until the Borough has made the plant investment that is included in rates established in the pending base rate case, so that Hanover will not (double) recover the same investment in base rates and DSIC rates. OCA Answer at 4.

The OCA raised a concern, however, that Hanover's LTIP is for the five-year period beginning on January 1, 2023, more than one year after the proposed implementation of the DSIC. OCA Answer at 4. The OCA submitted that choosing a later period for the LTIP may have created an improper disconnect between the LTIP and the DSIC. *Id.* Section 1352 requires the Commission to promulgate regulations "ensure that a distribution system improvement charge shall terminate if the commission determines that the utility is not in compliance with the approved [LTIP]." 66 Pa. C.S. § 1352(b). Consistent with that requirement, the Commission's regulations provide that if a utility is noncompliant with its approved LTIP the remedy is the termination of the utility's DSIC. 52 Pa. Code § 121.8(c). This and the other LTIP regulations clearly tie the existence of an approved DSIC mechanism to LTIP compliance. 52 Pa. Code §§ 121.5(c), 121.7(d), 121.8(c). As such, in its Answer to the proposed DSIC, the OCA submitted that it is not appropriate for Hanover to have a DSIC in place (even a DSIC set at 0.0%) for periods in which it does not have an LTIP in effect. OCA Answer at 4. By providing that the DSIC will not take

effect until January 1, 2023, the proposed Settlement resolves the timing issue by aligning the effective date of the DSIC with the start of the LTIIP period.

Settlement ¶ 11(b): Jurisdictional Property

The Borough is the first utility seeking to implement a DSIC that also has customers who are not PUC-regulated and to whom the DSIC will not apply. As stated in the OCA’s Answer, the Petition lacked specification showing that the DSIC will not recover costs of eligible property that are not related to the provision of jurisdictional utility service and how those projects will be distinguished. OCA Answer at 2.

In response, the proposed Settlement clarifies that jurisdictional property, in most circumstances, will be based on physical location. Settlement ¶ 11(b). Specifically, if an upgraded distribution main, hydrant, meter, or service is located inside the Borough, the cost will not be ascribed to jurisdictional customers – except in the circumstance when the upgrade or replacement inside the Borough also benefits jurisdictional customers, such as a transmission main. *Id.* In this circumstance, the Borough will apportion a percentage of the cost to PUC-jurisdictional customers based on the allocation in the cost of service study that is approved by the Commission in the Borough’s pending base rate case at Docket No. R-2021-3026116. *Id.* The OCA submits that this allocation methodology is a reasonable means to limit DSIC recovery to costs for projects that benefit jurisdictional customers and is consistent with how costs are allocated for base rate purposes. The OCA anticipates that use of the allocation factor will be limited, as the DSIC only recovers “distribution” plant and does not include storage or treatment facilities that serve customers inside and outside the Borough. Further, the Borough’s COSS and allocation factors are currently under review and will continue to be subject to review in future base rate cases, so they can be adjusted as appropriate.

In addition, Hanover will show, in the supporting calculations filed with its quarterly DSIC updates, how costs were allocated between non-jurisdictional and jurisdictional customers, and specify whether the allocation was based on physical location or a factor allocation from the COSS and, if the latter, which factor allocation(s). Settlement ¶ 11(b). This additional term provides necessary information to help parties monitor to ensure costs claimed in DSIC rates are properly recovered from jurisdictional customers.

Settlement ¶ 11(c) and (d): DSIC Tariff Revisions

In its Answer, the OCA identified that the Borough's proposed calculation of pretax return as set forth in the testimony of its witness, Harold Walker, and in the sample calculation of the proposed DSIC does not include a gross up for state and federal income taxes. See Exhibit HW-1 at 2; Hanover St. 1 at 7-8. The OCA recommended that Hanover should modify its proposed tariff to conform to its testimony and sample calculation.

The proposed Settlement recognizes that, as a municipality, Hanover is not subject to state or federal income taxes and adopts the OCA recommendation by revising Section 2.B.2 of the DSIC tariff supplement to specify the statutory state and federal income tax rate that will be used in the Borough's pre-tax return calculation. Settlement ¶ 11(c). Also, pursuant to the Settlement, the Borough will include a statement in its supporting calculations referencing that Hanover is utilizing a 0% tax rate to reflect that it is not subject to federal or state income taxes. Id. This will make the supporting calculations consistent with the tariff and explain the absence of a gross-up for income taxes in the Borough's calculation of the pre-tax return (PTRR) component of the DSIC.

Additionally, the proposed Settlement provides that the reference to the State Tax Adjustment Surcharge (STAS) will be removed from Section 2.C of the DSIC tariff. Settlement

¶ 11(d). Consistent with the OCA's recommendation (Answer at 3), this recognizes that Hanover does not have a STAS and makes the tariff language consistent with this fact.

Settlement ¶ 11(e): Shared Plant

The proposed Settlement provides the Borough's agreement that, if it claims any shared plant in a DSIC filing, it will provide a schedule that shows the total and amount of plant, annual depreciation expense and return dollars for each plant addition allocated to outside customers. Settlement ¶ 11(e). This settlement term is in the public interest as it provides additional detail for the parties to review and monitor, to ensure that the allocation to PUC-jurisdictional customers is supported and appropriate.

III. CONCLUSION

The Settlement effectively resolves the issues that the Office of Consumer Advocate raised and considered in response to the initial DSIC Petition filed by the Borough of Hanover. For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement are in the public interest and should be approved.

Respectfully Submitted,

/s/Erin L. Gannon

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Counsel for:
Christine Maloni Hoover
Interim Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: November 19, 2021

#318838

APPENDIX E
Statement in Support of the
Hanover Foods Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of The Borough of Hanover -	:	Docket No. P-2021-3026854
Hanover Municipal Water Works for	:	
Approval of a Distribution System	:	
Improvement Charge	:	
	:	
Hanover Foods Corporation	:	Docket No. C-2021-3027810
	:	
v.	:	
	:	
The Borough of Hanover – Hanover	:	
Municipal Water Works	:	

**THE HANOVER FOODS CORPORATION
STATEMENT IN SUPPORT**

The Hanover Foods Corporation (“Hanover Foods”), by and through its counsel, submits that the Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) concurrently filed with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) in the above-captioned proceedings reflects a settlement among the Joint Petitioners with respect to the Borough of Hanover – Hanover Municipal Water Works’ (“Hanover” or “Borough”), June 29, 2021, Petition requesting authority to implement a Distribution System Improvement Charge (“DSIC”) pursuant to 66 Pa. C.S. §§ 1352-1353 and Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Aug. 2, 2012).

As a result of settlement discussions, the Borough, Hanover Foods, the Bureau of Investigation & Enforcement (“I&E”), and the Office of Consumer Advocate (“OCA”) (collectively, the “Joint Petitioners”), have agreed upon the terms embodied in the foregoing Joint Petition. Hanover Foods offers this Statement in Support to further demonstrate that the Settlement is in the public interest and should be approved without modification.

BACKGROUND

1. On June 29, 2021, the Borough filed a Petition to implement a DSIC.
2. On August 9, 2021, Hanover Foods filed a Complaint in the above-captioned proceedings. As noted in its Complaint, Hanover Foods is a food processing company located in the Borough of Hanover that uses substantial volumes of water in its manufacturing and operational processes. These water costs are a significant element of Hanover Foods' respective cost of operation. As a result, Hanover Foods was concerned that the application of a DSIC would impact its cost of operations. Hanover Foods' Complaint indicated that the PUC should investigate several aspects of the Borough's filing, including whether the surcharge proposed is appropriate; whether the types of property the Borough proposes to recover through the DSIC are "eligible property" within the meaning of Section 1553 of the Public Utility Code; whether the allocation of the proposed DSIC is just, reasonable, and non-discriminatory; and whether the proposed increase affecting Hanover Foods is just, reasonable, and non-discriminatory.
3. In accordance with the Commission's policy encouraging negotiated settlement of contested proceedings, the Joint Petitioners engaged in discussions to resolve the issues raised by the various parties. These negotiations resulted in the Settlement, which proposes a resolution of all of the issues between the Joint Petitioners in this proceeding as set forth below.

STATEMENT OF SUPPORT

4. The Commission has a strong policy favoring settlements. As set forth in the Commission's regulations, "[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa. Code § 69.391; *see also* 52 Pa. Code § 5.231. Consistent with the Commission's policy,

the Joint Petitioners engaged in negotiations in an effort to settle the issues raised in this proceeding. These ongoing discussions produced the foregoing Settlement.

5. The Joint Petitioners agree that approval of the proposed Settlement is overwhelmingly in the best interest of the parties involved.

6. The Joint Petitioners agree that the Borough's Petition should be approved and that the Borough should be allowed to implement a DSIC by filing a tariff supplement in the form attached to the Joint Petition. Joint Petition at Paragraph 11.

7. The Joint Petitioners agree that the initial DSIC rate will be 0.0%, effective January 1, 2023, until the Borough has placed in service a level of plant that exceeds the level approved by the Commission for fully projected future test year base rate recovery in the Borough's pending rate case at Docket No. R-2021-3026116. *Id.* at Paragraph 11a.

8. The Joint Petition is in the public interest for the following reasons:

- a. As a result of the Joint Petition, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be less than they would have been if the proceeding had been fully litigated.
- b. Uncertainties regarding further expenses associated with possible appeals from the final order of the Commission are avoided as a result of the Joint Petition.
- c. The Joint Petition provides a just and reasonable means by which to implement the DSIC.
- d. The Joint Petition reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding.
- e. The Joint Petition is presented without prejudice to any position any party may advance in future proceedings involving the Company.

9. Hanover Foods supports the foregoing Joint Petition because it is in the public interest; however, in the event that the Administrative Law Judge or the Commission

disapproves the Settlement or modifies any terms or conditions herein, Hanover Foods will resume its litigation position, which differs from the terms of the Joint Petition.

10. As set forth above, Hanover Foods submits that the Settlement is in the public interest and adheres to Commission policies promoting negotiated settlements. The Settlement was achieved after numerous negotiations. Although Joint Petitioners have invested time and resources in the negotiation of the Joint Petition, this process has allowed the parties, as well as the Commission, to avoid expending the substantial resources that would have been required to fully litigate this proceeding while still reaching a just, reasonable, and non-discriminatory result. Joint Petitioners have thus reached an amicable resolution to this dispute as embodied in the Settlement. Approval of the Settlement will permit the Commission and Joint Petitioners to avoid incurring the additional time, expense, and uncertainty of further litigation in this proceeding. *See* 52 Pa. Code § 69.391.

WHEREFORE, Hanover Foods Corporation respectfully requests that Administrative Law Judge F. Joseph Brady and the Pennsylvania Public Utility Commission approve the foregoing Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Charis Mincavage (I.D. No. 82039)
Kenneth R. Stark (I.D. No. 312945)
McNEES WALLACE & NURICK LLC
100 Pine Street, P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 260-1725
cmincavage@mcneeslaw.com
kstark@mcneeslaw.com

Counsel to the Hanover Foods Corporation

Dated: November 19, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
F. Joseph Brady, Presiding**

Petition of The Borough of Hanover for :
Approval of a Distribution System : **Docket No. P-2021-3026854**
Improvement Charge :

Hanover Foods Corporation v. The :
Borough of Hanover – Hanover : **Docket No. C-2021-3027810**
Municipal Water Works :

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of November, 2021, served a true and correct copy of the foregoing Joint Petition of the Borough of Hanover – Hanover Municipal Water Works, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and Hanover Foods Corporation for Approval of Settlement upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ermclain@pa.gov

Laura J. Antinucci
Assistant Consumer Advocate
Erin L. Gannon
Senior Assistant Consumer Advocate
Office of Consumer Advocate
lantinucci@paoca.org
egannon@paoca.org

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Office of Small Business Advocate
sgray@pa.gov

Charis Mincavage, Esq.
Kenneth R. Stark, Esq.
McNees, Wallace & Nurick
CMincavage@mcneeslaw.com
KStark@mcneeslaw.com



Thomas T. Niesen, Esq.
PA Attorney ID No. 31379
*Counsel for The Borough of Hanover – Hanover
Municipal Water Works*