

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2021-3026116
Office of Consumer Advocate	:	C-2021-3027274
Office of Small Business Advocate	:	C-2021-3027361
Hanover Foods Corporation	:	C-2021-3027807
	:	
v.	:	
	:	
The Borough of Hanover – Hanover	:	
Municipal Water Works	:	

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision recommends the Pennsylvania Public Utility Commission (Commission) approve, with my proposed addendums, the Joint Petition for Settlement of Rate Investigation (Settlement) dated December 6, 2021, filed by the Borough of Hanover – Hanover Municipal Water Works (Borough), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and Hanover Foods Corporation (HFC) (hereinafter collectively referred to as “Joint Petitioners”) seeking Commission approval of rates and rate changes that would increase the level of rates that the Borough charges for providing water service to its customers located outside the Borough. Approval of the Settlement, with my proposed addendums, is recommended because it is in the public interest and supported by substantial evidence.

This is a “black box” settlement wherein the Joint Petitioners agree the Borough should not charge the base rates the utility proposed initially, which would have increased annual

revenues by approximately \$1,563,100 or 27.6% based upon data for a fully projected future test year (FPFTY) ending December 31, 2022. Instead, the Joint Petitioners request the Commission authorize the Borough to earn a net increase in annual revenue of \$1,044,980, which is a reduction of approximately 33% of the initial amount requested. Under the Settlement:

(1) the quarterly cost of water service to an Outside Borough residential customer using 11,000 gallons per quarter with a 5/8-inch meter will increase by \$12.78 from \$68.94 to \$81.72 per quarter, or by 18.5%, compared to an increase of \$19.38, or 28.1%, as initially requested;

(2) the quarterly cost of water service to a commercial customer using 37,000 gallons per month with a 5/8-inch meter will increase by \$33.17 from \$154.02 to \$187.18 or by 21.5%, compared to an increase of \$50.09, or 32.5%, as initially requested; and

(3) the quarterly cost of water service to an industrial customer using 332,000 gallons per quarter with a 2-inch meter will increase by \$216.76 from \$1,366.66 to \$1,583.43 or by 15.9%, compared to an increase of \$335.32, or 24.5%, as initially requested.

My recommendation includes five proposed addendums that do not substantially alter the terms of the Settlement, but rather, supplement it. These proposed addendums are:

1. Specification of the annual depreciation accrual rates to be used by the Borough when calculating its Distribution System Improvement Charge (DSIC);

2. A directive for the Borough to conform with the National Association of Regulatory Utility Commissioners (NARUC USOA) in all future DSIC rate filings;

3. A directive for the Borough to file with the Secretary copies of the projected plant additions and retirements schedules that it agreed to provide to the Commission's Bureau of Technical Utility Services (TUS), I&E, the OCA and the OSBA;

4. A directive for the Borough to provide a written notice to each customer (*i.e.*, the affected municipality or municipalities) of the location of each fire hydrant in the jurisdictional area that the Borough believes cannot provide minimum fire flow; and

5. A directive for the Borough to revise Page No. 4 of the tariff to include the Borough's existing monthly base charge, consistent with the monthly base charges indicated in the Settlement's Appendix B.

The suspension period of the Borough's proposed Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 is March 28, 2022. Thus, the last reasonable public meeting for the Commission to act is March 10, 2022.

HISTORY OF THE PROCEEDING

On June 29, 2021, the Borough filed Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 to become effective August 28, 2021. The Borough proposed an annual increase of \$1,563,100 in water service revenue for its Outside Borough Water Service.

On July 15, 2021, the OCA filed a formal Complaint, Public Statement, Verification, and a Notice of Appearance on behalf of Christine Hoover, Esq. The Complaint was docketed at C-2021-3027274.

On July 20, 2021, the OSBA filed a formal Complaint, Public Statement, Verification, and a Notice of Appearance on behalf of Steven C. Gray, Esq. The Complaint was docketed at C-2021-3027361.

By Order entered August 5, 2021, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of rates, rules, and regulations contained in the Borough's proposed Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S.A. § 1308(d), Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 was suspended by operation of law until March 28, 2022, unless permitted by

Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the existing rates, rules, and regulations of the Borough. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision. In accordance with the Commission's August 5, 2021 Order, the matter was assigned to me.

On August 9, 2021, HFC filed a formal Complaint and Notice of Appearance on behalf of Charis Mincavage, Esq. The Complaint was docketed at C-2021-3027807.

On August 10, 2021, Erika L. McLain, Esq., entered a Notice of Appearance on behalf of I&E.

On August 12, 2021, in compliance with the Commission's August 5, 2021, Order, the Borough filed Supplement No. 33 to Tariff Water – Pa. P.U.C. No. 3 to reflect the suspension of Supplement No. 32 until March 28, 2022.

On August 16, 2021, a Prehearing Conference Notice was issued scheduling an initial prehearing conference for August 31, 2021, at 10:00 a.m.

On August 17, 2021, a Prehearing Order was issued informing the parties of the procedures applicable to this proceeding.

On August 27, 2021, Prehearing Memoranda were filed by the Borough, OCA, OSBA, I&E, and HFC.

A telephonic Prehearing Conference was held on August 31, 2021. Counsel for the Borough, OCA, OSBA, I&E, and HFC participated.

On September 16, 2021, I issued Prehearing Order No. 2, memorializing a litigation schedule, providing for the service of testimony, evidentiary hearings on November 4 and 5, 2021, and the filing of main and reply briefs.

On October 23, 2021, I presided over a Telephonic Public Input Hearing. No public witnesses offered testimony at the Telephonic Public Input Hearing.

On November 1, 2021, Counsel for the Borough advised me via electronic mail that the Joint Petitioners reached a black box settlement of issues resolving the proceeding.

The evidentiary hearings scheduled for November 4 and 5, 2021, were cancelled as a result of the settlement of issues.

On December 6, 2021, the Borough filed a Joint Petition for Settlement of Rate Investigation on behalf of the Joint Petitioners, along with Statements in Support from the Joint Petitioners. On this same date, the Borough also filed a Joint Motion for Admission of Testimony and Exhibits on behalf of the Joint Petitioners.

On December 14, 2021, I issued an Interim Order granting the Joint Motion for Admission of Testimony and Exhibits.

On December 21, 2021, I issued an Interim Order closing the record. This matter is now ripe for a decision.

TERMS OF THE SETTLEMENT

The black box Settlement is eleven (11) pages containing twenty-five (25) numbered paragraphs. Appendix A to the Settlement contains the proposed tariff supplement and rates to be filed upon approval of the Settlement. Appendix B contains the proof of corresponding revenue. Appendices C, D, E, F, and G are the respective statements of the Borough, I&E, the OCA, the OSBA, and HFC in support of the Settlement.

The essential terms of the Settlement are contained in Paragraphs 17 – 24, quoted below verbatim and, for ease of reference, retain the same numbers and headings as they appear in the Settlement:

Terms and Conditions of Settlement

17. The terms and conditions comprising this Joint Petition, to which Joint Petitioners agree, are as follows:

(a) Increase in Annual Revenue and Scale Back

Joint Petitioners request that the Commission approve this Joint Petition and grant the Borough special permission to file a tariff supplement in the form attached hereto as Appendix A, to become effective for service no sooner than March 28, 2022.

The settlement rates presented in Appendix A are designed to produce additional annual revenue of \$1,044,980, in lieu of the originally proposed rate increase of \$1,563,100. They reflect a proportional scale back from the percentage increases originally proposed by the Borough.

A proof of revenue for the Appendix A settlement rates is attached hereto as Appendix B.

(b) Lead/Lag Study

The Borough agrees that, in any future base rate filing requesting an increase to revenues over \$1,000,000, it will either submit the lead/lag study required by 52 Pa. Code Section 53.53 for its cash working capital claim or submit a request for waiver of that requirement to allow use of the cash working capital 1/8 method in advance of its base rate filing.

(c) Distribution System Improvement Charge

Joint Petitioners agree that Hanover will be eligible to include plant additions in the Distribution System Improvement Charge (“DSIC”) once the additional balances of depreciable plant exceed \$72,824,372.39, which is the level of investment projected by Hanover on December 31, 2022 (*i.e.*, the end of the Fully Projected Future Test Year (“FPFTY”) per Table No. 1 (Borough of Hanover Exhibit JJS-3, p. I-4)). This provision is included solely for purposes of calculating the DSIC and is not

determinative for future ratemaking purposes of the projected additions to be included in rate base in an FPFTY filing.

For purposes of calculating its DSIC, Hanover shall use the equity return rate for water utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for water utilities contained in the most recent Quarterly Earnings Report consistent with 66 Pa.C.S. § 1357(b)(3) as modified to reflect the 0% tax liability of the municipality, until such time as the DSIC is reset pursuant to the provisions of 66 Pa.C.S. § 1358(b)(1).

(d) Reporting on Plant Additions

Hanover will provide the Bureau of Technical Utility Services, I&E, OCA and OSBA with a schedule comparing the projected plant additions and retirements for the Future Test Year with actual plant additions and retirements for the Future Test Year, no later than April 1, 2022. Hanover will provide a similar comparison for the Fully Projected Future Test Year no later than April 1, 2023.

(e) Isolation Valves

The Borough agrees that it will exercise or attempt to exercise 400 different isolation valves per year in the jurisdictional area until all the valves have been exercised in a 5-year period. The Borough will either repair isolation valves that are found to be inoperable at the time they are identified or submit a schedule to the Joint Petitioners by November 15 of each year for repair or replacing valves for the following calendar year.

As part of its next rate case filing, the Borough will provide the Joint Petitioners with a copy of its exercising records from 2022 forward. Consistent with the Settlement of the 2014 base rate case at Docket No. R-2014-2428304, the records will include: the size and location of the valve, when the valve was installed, date the valve is turned, number of turns it takes to open and close the valve, and any problems incurred in operating the valve.

(f) Fire Hydrants

The Borough has 16 fire hydrants in the jurisdictional area that cannot provide minimum fire flow of 500 gallons per minute at 20 pounds per square inch. The Borough will mark the 16 hydrants to be used only for flushing and blow offs and provide confirmation to the Joint Petitioners upon completion.

(g) Complaint Log

The Borough will keep a single complaint log in a live Excel format. The complaint log will include which type of customer (jurisdictional or non-jurisdictional) made the complaint with the following detail: date; location; dirty water; rusty water; water taste, odor, or color; staining (of laundry or plumbing fixtures); request for water testing; customer property damage; incomplete surface restoration; and health issues; and the final disposition of the complaint.

(h) Water Treatment Solids

In its next rate proceeding, the Borough will provide a summary of sewer bills including a breakdown of volumes and applicable charges and surcharges for the prior three years to support the total sewer expense claimed in the rate proceeding. The Borough will track water treatment solids levels and investigate sources of substantive increases in solids for possible sources and solutions. In the next base rate proceeding, the Borough will provide a report showing monthly solids averages and provide the results of investigations as to cause for substantive increases.

(i) Stay-Out

The Borough agrees that it will not file a general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), prior to two (2) years after the new rates go into effect; provided, however, that this provision shall not prevent Hanover from filing a tariff or tariff supplement proposing a general increase in rates in compliance with Commission orders or in response to fundamental changes in regulatory or other policies affecting the Borough's rates.

Other Provisions

18. Under the presently suspended Supplement No. 32:
(1) the quarterly cost of water service to an Outside Borough

residential customer using 11,000 gallons per quarter with a 5/8-inch meter would have increased by \$19.38 from \$68.94 to \$88.32 per quarter or by 28.1%; (2) the quarterly cost of water service to a commercial customer using 37,000 gallons per quarter with a 5/8-inch meter would have increased by \$50.09 from \$154.02 to \$204.11 or by 32.5%; and (3) the monthly cost of water service to an industrial customer using 332,000 gallons per quarter with a 2-inch meter would have increased by \$335.32 from \$1,366.66 to \$1,701.98 or by 24.5%.

19. Under the Joint Petition: (1) the quarterly cost of water service to an Outside Borough residential customer using 11,000 gallons per quarter with a 5/8-inch meter will increase by \$12.78 from \$68.94 to \$81.72 per quarter or by 18.5%; (2) the quarterly cost of water service to a commercial customer using 37,000 gallons per month with a 5/8-inch meter will increase by \$33.17 from \$154.02 to \$187.18 or by 21.5%; and (3) the quarterly cost of water service to an industrial customer using 332,000 gallons per quarter with a 2-inch meter will increase by \$216.76 from \$1,366.66 to \$1,583.43 or by 15.9%.

Settlement at 3-7.

Other specified terms of the Settlement include the provisions that: (1) although the Joint Petitioners do not agree to each claim and/or to each specific rate adjustment, the signatories do agree as to the amount of increase in the annual water revenue for Outside Borough Service, coupled with other provisions included in the Settlement (Settlement, ¶ 20); (2) the parties submit the Settlement without any admissions against prejudice to positions the Joint Petitioners might adopt in subsequent litigation, including litigation of the instant case, if necessary; and (3) the Settlement is contingent upon the Commission's approval of all its terms and conditions. (Settlement, ¶ 22). In the event the Commission does not approve the Settlement, or modifies any of the terms and conditions, the Joint Petitioners may withdraw from the Settlement upon written notice (Settlement, ¶ 22). If the presiding officer recommends approval of the Settlement, then the Joint Petitioners waive the filing of Exceptions. They do not waive the filing of Exceptions to any recommended modifications and reserve the right to file Reply Exceptions in the event any Exceptions are filed (Settlement, ¶ 24).

DISCUSSION

A. Applicable Law

The purpose of this investigation is to establish water rates for Borough customers located outside the Borough which are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa.C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975), *rev'd on other grounds*, 424 A.2d 1213 (Pa. 1980). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 692-93.

The “burden of proof” standard employed in contested matters is not the standard for deciding whether a proposed settlement should be recommended for approval. *Pa. Pub. Util. Comm'n v. City of Lancaster -- Bureau of Water*, 2010 Pa. PUC LEXIS 1318 (Pa. PUC 2010). *See also Pa. Pub. Util. Comm'n v. Penn Estates Utils., Inc. Water Division*, 2012 Pa. PUC

LEXIS 331 (Pa. PUC 2012). In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991).

Section 315(a) of the Code reads as follows:

§ 315. Burden of proof

(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings and decide the same as speedily as possible.

66 Pa.C.S. § 315(a). Consequently, in this proceeding, the Borough has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. The Joint Petitioners have reached an accord on the issues and claims that arose in this proceeding and submitted a Joint Petition for Settlement for Commission approval. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

In addition, it is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231(a). The Commission has set forth settlement guidelines and procedures for major rate cases at 52 Pa. Code § 69.401, wherein the Commission states:

§ 69.401. General.

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, 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. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402-69.406 and this

section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined. A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 14.

Nevertheless, the Commission has also stated:

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote, and serve the public interest. Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest.

Id. at 15 (citations omitted).

The instant Settlement was achieved without specific ratemaking adjustments to support the specific components it contains. However, the Settlement balances the interests of the Joint Petitioners to the proceeding and provides reasonable resolutions for the issues that were pending producing fair results. The Joint Petitioners have agreed to an overall outcome that they find reasonable under the unique circumstances of the proceeding and have not identified individual components of the overall revenue requirement to settle upon.

The Settlement in this case is a “black box” settlement. This means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has noted that “black box” settlements are an important aspect in the process of delivering timely and cost-effective regulation.” See *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Final Order entered Dec. 20, 2018); see also *Pa. Pub. Util. Comm’n v. Pennsylvania-American Water Co.*, Docket No. R-2017-2595853 (Final Order entered Dec. 7, 2017); *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2015-2468981 (Final Order entered Dec. 17, 2015); *Pa. Pub. Util. Comm’n v. Borough of Ambler Water Dept.*, Docket No. R-2014-2400003 (Final Order entered December 4, 2014); *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Final Order entered December 19, 2013); *Pa. Pub. Util. Comm’n v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); and *Pa. Pub. Util. Comm’n v. Citizens’ Elec. Co. of Lewisburg, Pa.*, Docket No. R-2010-2172665 (Final Order, entered January 13, 2011).

A “black box” settlement is a means to reach agreement on a rate increase in a case where the issues raised are varied and complex. To delineate and specify each component of the rate increase to the issues would be difficult, time-consuming, expensive, and costly to the consumers as a rate case expense. To curtail any delineation is to save time, expense and costs of the parties and the ratepayers. The Commission has in the past found such “black box” settlements to be reasonable and in the public interest. See for example, *Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*, Docket No. R-2014-2406274 (Final Order entered December 10, 2014) (approving “black box” settlement for a base rate increase of \$32.5 million); *Pa. Pub. Util. Comm’n v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Final Order entered April 23, 2014) (approving “black box” settlement for a base rate increase of \$48 million); *Pa. Pub. Util.*

Comm'n v. PPL Electric Utils. Corp., Docket No. R-2010-2161694 (Final Order entered December 16, 2010) (approving “black box” settlement for a base rate increase of \$77.5 million).

The instant case is consistent with Commission precedent.

B. Analysis

1. Settlement Terms

(a) Increase in Annual Revenue and Scale Back

The Borough asserted that it provides water service to 10,969 customers outside the Borough limits and to 7,010 customers inside the Borough limits.¹ Statement C at 2. The Borough supplies drinking water for residential, commercial, industrial, and public uses, and for fire protection purposes. *Id.*

The Borough contended the Joint Petitioners agreed this rate proceeding can be settled without further litigation under the terms set forth in the Settlement. *Id.* The Settlement provides for a \$1,044,980, or 18.5%, increase in annual revenue for Outside Borough Customers and a two-year stay-out provision. *Id.*; Settlement ¶ 17(a).

The Borough contended the Settlement increase will provide it with additional and necessary cash flow to meet operating expenses, while addressing matters of interest to ratepayers and avoiding the cost and uncertainty of litigation. *Id.* at 4. The Borough submitted the Settlement is reasonable, in the public interest and should be approved without modification. *Id.* at 6. Furthermore, it asserted the Settlement proposes a resolution of all issues and, therefore, the principal issue for Commission consideration is whether the agreement reached is in the public interest. *Id.*

¹ The Borough provides water service in the Borough of Hanover and four other municipalities: Penn Township, York County; Heidelberg Township, York County; Conewago Township, Adams County; and the Borough of McSherrystown, Adams County.

The Borough averred it must increase its rates to provide sufficient revenue to enable it to continue to discharge its public duty to furnish adequate, safe, and reliable water service, to provide the cash flow necessary to continue to operate, maintain and renew its facilities properly and meet its financial obligations and to be afforded the opportunity to achieve an adequate return on the original cost invested in water property. *Id.* at 4. The Borough contended that it is in need of immediate rate relief since its last rate increase was in 2015 and at present rate levels, on a *pro forma* basis, it will experience a return of only 1.93%. *Id.*

The Borough pointed out that under its initial request (in Supplement No. 32), the quarterly cost of water service to an Outside Borough residential customer using 11,000 gallons per quarter with a 5/8-inch meter would have increased by \$19.38 from \$68.94 to \$88.32 per quarter or by 28.1%. *Id.* Under the settlement terms, the quarterly increase is \$12.78 or 18.5%. *Id.*

The Borough averred the financial data it submitted fully supports the substantially reduced increase of \$1,044,980 provided for in the Settlement and believes the increase should be sufficient to allow it to continue to provide reasonable and adequate service. *Id.* at 6. Although the Borough believes it could have supported a higher revenue requirement if it had proceeded to litigation, under the totality of the circumstances the cost avoidance by settling is in the interest of the Borough and its customers. *Id.*

The Borough averred that it agreed to a proportional scale back of rates proposed by I&E and the OSBA, which are reflected in the settlement supplement. *Id.* at 6-7. The Borough contended that the proportional scale back, which is unopposed by the Joint Petitioners, is in the public interest. *Id.* at 7.

The OCA, I&E, and HFC stated that the Settlement rates reflect a proportional scale back from the percentage increases originally proposed by the Borough and the revenue increase under the Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. Statement D at 4-6; Statement E at 5-6; and Statement G at 4.

I find that the revenue increase agreed upon in the Settlement provides the necessary funding to allow the Borough to continue to provide safe, adequate, reliable, and continuous service. Additionally, I recognize this increase is a substantial decrease from the amount originally requested by the Borough and contains a proportional scale back of rates. Consequently, I find that this provision is reasonable and in the public interest.

(b) Lead/Lag Study

The Borough recognized I&E's criticism that it did not submit a lead/lag study in support of its cash working claim as required by 52 Pa. Code § 53.53. Statement C at 7; Statement D at 6. The Borough averred that it addressed this criticism by agreeing that, in any future base rate filing requesting an increase to revenues over \$1,000,000, it will either submit the lead/lag study in support of its cash working capital claim or submit a request for waiver to allow use of the cash working capital 1/8 method in advance of its base rate filing. *Id.*; Settlement ¶ 17(b).

I find that this provision is reasonable and in the public interest as it ensures that the Borough complies with Commission regulations with regard to this element in its next base rate case.

(c) Distribution System Improvement Charge

The Borough's Petition for Approval of a Distribution System Improvement Charge ("DSIC") is pending before the Commission at Docket No. P-2021-3026854. The Borough states that the DSIC tariff language presented and proposed in the DSIC Petition anticipated that the initial DSIC rate would be set at 0.0% and that the Borough would not recover costs 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 base rate recovery in this rate proceeding or as otherwise directed by the Commission. Statement C at 7; Settlement ¶ 17(b).

The Settlement states that the Borough will be eligible to include future plant additions in the DSIC once the total account balances of total depreciable plant exceed \$72,824,372.39, which is not projected to happen until after December 31, 2022. *Id.* Further, the Joint Petitioners have also acknowledged that, for purposes of calculating its DSIC, the Borough shall use the equity return rate for water utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for water utilities contained in the most recent Quarterly Earnings Report as modified to reflect the 0% tax liability of the municipality. *Id.* at 8.

The OCA avers that this term of the Settlement is in the public interest as it ensures the Company will not be permitted to recover plant investment through the DSIC that is already included in base rates. Statement E at 7. In addition, the OCA and I&E contend that these settlement terms are aimed at ensuring an accurate and proper calculation of Hanover's proposed DSIC and, therefore, are in the public interest. *Id.*; Statement D at 6-7.

The DSIC is a rate mechanism specifically allowed by statute. 66 Pa.C.S. § 1353. I find these terms of the Settlement resolve questions concerning the implementation of the DSIC in a way that is reasonable and in the public interest with two proposed addendums.

First, when calculating the DSIC, Section 1357(b) of the Public Utility Code, 66 Pa.C.S. § 1357(b) provides the following:

Depreciation shall be calculated by applying the original cost of the eligible property to the annual accrual rates employed in the utility's most recent base rate case for the plant accounts in which each retirement unit of distribution system improvement charge eligible property is recorded.

66 Pa.C.S. § 1357(b).

In the Settlement, the Borough provided three different annual depreciation accrual rates: (1) for the 12 months ended December 31, 2020 (the Historic Test Year or HTY); (2) for the 12 months ending 2021 (the Future Test Year or FTY); and (3) for the 12 months

ending 2022 (the Fully Projected Future Test Year, or FPFTY). *See* Hanover Exhibit Nos. JJS-1 at Page I-4, Col. (8), JJS-2 at Page V-4, Col. (8), and JJS-3 at Page I-3, Col. (8), respectively. However, the Settlement is silent on which of the three annual depreciation accrual rates will be used for calculating the Borough's DSIC. Thus, considering that the depreciation rates indicated in Exhibit No. JJS-3 (the FPFTY) were uncontested, that revenues from Settlement rates were determined using the FPFTY, and that Exhibit No. JJS-3 includes depreciation rates for the FPFTY, this Recommended Decision shall include, as a proposed addendum to the Settlement, an ordering paragraph specifying that the Borough shall use the annual depreciation accrual rates indicated in Exhibit No. JJS-3 for the purpose of calculating its DSIC.

Second, the Commission's regulations require water utilities to keep their accounts in conformity with the most recent Uniform System of Accounts prescribed by the National Association of Regulatory Utility Commissioners (NARUC USOA). 52 Pa. Code § 65.16. However, it appears that the Borough uses utility plant account numbers that do not conform with the NARUC USOA account numbers used by other water utilities. For example, the Borough appears to use Account No. 249 for services, whereas the NARUC USOA uses Account No. 333 for services. *See* Exhibit JJS-3 and the Joint Petitioners' proposed DSIC tariff supplement. Also, the Borough appears to record transmission and distribution mains under Account Nos. 246 and 248, respectively, whereas the NARUC USOA uses Account No. 331 for both transmission and distribution mains. *Id.*

Using consistent accounting practices is important to ensure that only costs associated with eligible property are recovered through the DSIC, to determine the appropriate depreciation rate to apply to such eligible property, and to align the Borough DSIC reporting and reconciliation practices with the practices observed by similar water public utilities with DSIC rates. Accordingly, this Recommended Decision shall include, as a proposed addendum to the Settlement, an ordering paragraph directing that, with future DSIC rate filings and until directed otherwise by the Commission, the Borough shall use account numbers, and subaccounts where applicable, that conform with the NARUC USOA for Class A water utilities. For example, transmission and distribution mains should be recorded under separate subaccounts of Account No. 331 and should be depreciated at the rates indicated in Exhibit JJS-3.

(d) Reporting on Plant Additions

Under the Settlement, the Borough will provide the Commission's Bureau of Technical Utility Services (TUS), I&E, the OCA and the OSBA with a schedule comparing the projected plant additions and retirements for the FTY with actual plant additions and retirements for the FTY, no later than April 1, 2022. Settlement ¶ 17(d). Further, the Borough will provide a similar comparison for the FPFTY no later than April 1, 2023. *Id.*

The OCA states that “these provisions are consistent with Section 315 of the Public Utility Code, which states that a utility utilizing a future test year and an FPFTY shall provide ‘appropriate data evidencing the accuracy of the estimates contained in the future test year or a fully projected future test year...’ 66 Pa. C.S. § 315(e).” Statement E at 7-8. Also, this data will aid the Commission and parties in evaluating the just and reasonableness of the Borough's rates. *Id.*

I&E argues that the updates are important because there is value in determining how closely the Borough's projected investments in future facility comport with actual investments that are made by the end of the FTY and FPFTY and that determining the correlation between projected and actual results will help inform the Commission and the parties in future rate cases as to the validity of the Borough's projections. Statement D at 7-8.

I find that this term is reasonable and in the public interest as it allows the parties and Commission to compare actual numbers to the Borough's projections to gauge the accuracy of projected investments in future proceedings.

Also, in order to bring this provision in full compliance with 52 Pa. Code § 5.591(a)-(b), this Recommended Decision shall include, as a proposed addendum to the Settlement, an ordering paragraph directing the Borough to file with the Secretary copies of the referenced schedules at this docket number as proof of compliance.

(e) Isolation Valves

Addressing a proposal recommended by the OCA, the Borough agreed to exercise or attempt to exercise 400 different isolation valves per year in the Commission's jurisdictional area until all the valves have been exercised in a 5-year period. Settlement ¶ 17(e); Statement C at 9. The Borough will either repair isolation valves that are found to be inoperable at the time they are identified or submit a schedule to the Settling Parties by November 15 of each year for repair or replacing valves for the following calendar year. *Id.*

In addition, as part of its next rate case filing, the Borough agreed to provide the Joint Petitioners with a copy of its exercising records from 2022 forward. *Id.* Consistent with the Settlement of the 2014 base rate case at Docket No. R-2014-2428304, the records will include: the size and location of the valve, when the valve was installed, date the valve is turned, number of turns it takes to open and close the valve, and any problems incurred in operating the valve. *Id.*

In support of this provision, the OCA cited the direct testimony of Terry L. Fought who explained:

[i]t is important to exercise isolation valves to prevent the valves from seizing up and getting stuck from corrosion or other deposits adjacent to the valve. An isolation valve that cannot be fully closed will increase the water loss during a water main break and increase the number of customers affected.

Statement E at 8. Mr. Fought also testified that if the isolation valves seize up or become stuck:

[t]he valve either has to be repaired or replaced. Isolation valves are generally in pavement and that makes it very expensive to repair or replace. Even repairing the valve requires that the valve be exposed so that interior parts can be removed and replaced.

Id.

The OCA submitted that the Commission should approve these provisions because they will help to prevent increased water loss during a main break and ensure that isolation valves are being exercised regularly to avoid unnecessary and expensive costs for repairing or replacing isolation valves that have seized-up from the lack of being exercised. *Id.* at 9.

I&E opined this term is in the public interest because it benefits both Hanover and its customers by ensuring that service will be reliable. Statement D at 8.

I concur with the Joint Petitioners and find that this term is reasonable and in the public interest.

(f) Fire Hydrants

Under the terms of the Settlement, the Borough agreed to mark the 16 fire hydrants in the jurisdictional area that cannot provide minimum fire flow of 500 gallons per minute at 20 pounds per square inch to be used only for flushing and blow offs and provide confirmation to the Settling Parties upon completion. Settlement ¶ 17(f).

The OCA averred this term is in the public interest as it will prevent the accidental use of these 16 hydrants in the case of a fire. Statement E at 9.

I also find this term reasonable and in the public interest with one addendum and one note of interest. Accordingly, this Recommended Decision shall include, as a proposed addendum to the Settlement, an ordering paragraph directing the Borough to provide a written notice to each customer (*i.e.*, the affected municipality or municipalities) of the location of each fire hydrant in the jurisdictional area that the Borough believes cannot provide minimum fire flow of 500 gallons per minute at 20 pounds per square inch, and to verify to the Commission upon compliance with this requirement. This notice should be provided within ten (10) days of the Commission's Order in this matter.

Also, it should be noted that neither this directive, nor the Commission's approval of the Settlement, should be construed as a finding or determination that the Borough is providing reasonable service related to such fire hydrants.

(g) Complaint Log

Under the terms of the Settlement, the Borough agreed to keep a single complaint log in a live Excel format that will include which type of customer (jurisdictional or non-jurisdictional) made the complaint with the following details: date; location; dirty water; rusty water; water taste, odor, or color; staining (of laundry or plumbing fixtures); request for water testing; customer property damage; incomplete surface restoration; and health issues; and the final disposition of the complaint. Settlement ¶ 17(g).

The OCA avers that the Commission should adopt this provision as it is consistent with the requirements of 52 Pa. Code § 65.3 for investigating and recording customer complaints and will help to improve reporting and facilitate review of the Borough's quality of service. Statement E at 10.

I&E avers that the complaint log will allow the Borough to assess its compliance with its obligation to provide safe and reliable service. Statement D at 9.

I concur with the Joint Petitioners and find that this term is reasonable and in the public interest.

(h) Water Treatment Solids

The Borough averred that I&E expressed concern with the Borough's claim for sewer expense, which is above the historic level of the expense. Statement C at 10. As a result, the Borough agreed to the following:

- In its next base rate filing, the Borough will provide a summary of sewer bills including a breakdown of volumes and

applicable charges and surcharges for the prior three years to support the total sewer expense claimed in the rate proceeding;

- The Borough also will track water treatment solids levels and investigate sources of substantive increases in solids for possible sources and solutions; and
- In its next base rate proceeding, the Borough will provide a report showing monthly solids averages and provide the results of investigations as to cause for substantive increases.

Settlement ¶ 17(h).

I&E and the OCA aver this term is in the public interest as it will allow parties in the next base rate case proceeding to analyze and recommend an appropriate allowance for this expense based upon the information in the report. Statement D at 9; Statement E at 10.

I concur with the Joint Petitioners and find that this term is reasonable and in the public interest.

(i) Stay-Out

Under the terms of the Settlement, the Borough will not file a general rate increase, as that term is defined in Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), for two years after the new rates go into effect. Settlement ¶ 17(i).

A rate case stay-out gives ratepayers a specified level of rate security that would not exist absent the stay-out provision. A rate case stay-out is a traditionally recognized part of the public's interest in settlement of a rate proceeding. Thus, I find that this term is reasonable and in the public interest.

2. Additional Recommendation – Monthly Charges

The Settlement's Appendix B – Proof of Revenue indicates that numerous customers are billed customer charges (also known as “base charges” under the Borough's tariff)

monthly rather than quarterly. However, the Schedule of Meter Rates does not indicate monthly rates for water service. *See* Settlement at Appendix A, Page No. 4. Also, Section 7.1 of the Borough’s effective tariff indicates: “Bills for general water service will be rendered quarterly or monthly, based on measured consumption, at the discretion of the Water Works, according to the Schedule of Meter Rates set forth in this tariff. All residential customers will be given the option to be billed monthly.”

Accordingly, this Recommended Decision shall include, as a proposed addendum to the Settlement, an ordering paragraph directing the Borough to revise Page No. 4 of the tariff to include the Borough’s existing monthly base charge, consistent with the monthly base charges indicated in the Settlement’s Appendix B. A sample of this revision is provided below, with new text in bold:

<u>Size of Meter</u>	<u>Per Month</u>	<u>Per Quarter</u>
5/8”	\$ 8.85	\$ 26.55
3/4”	12.24	36.72
1”	19.03	57.09
1-1/2”	36.04	108.12
2”	56.38	169.14
3”	120.88	362.64
4”	205.75	617.25
6”	426.42	1,279.26
8”	613.15	1,839.45

Please note that this revision is not intended to affect the Borough’s existing discretion to determine whether to render bills quarterly or monthly; rather, this revision is intended to specify the rates that will be charged to general water service residential customers that opt to be billed monthly or other general water service customers that the Borough determines, at its discretion, should be billed monthly.

C. Conclusion

Based on the foregoing, and upon reviewing the terms and conditions of the Settlement and the Statements in Support offered by the Joint Petitioners, I agree with the Joint Petitioners that the Settlement is reasonable and in the public interest. This Settlement, along

with the recommended addendums, will give the Borough the financial stability that will allow it to continue to provide reasonable and adequate water service to its ratepayers, and therefore, foster, promote, and serve the public interest. Accordingly, I recommend that the Settlement with addendums be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. §§ 1301 and 1308.
2. In a rate case, the burden of proof to show that the proposed rates are just and reasonable is on the public utility. 66 Pa.C.S. § 315(a).
3. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975).
4. In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Pub. Serv. Comm'n of West Va.*, 262 U.S. 679 (1923) and *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).
5. The policy of the Commission is to promote settlements. 52 Pa. Code §§ 5.231(a) and 69.401.
6. Despite the Commission policy to promote settlements, the Commission's determination to approve the proposed settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018).

7. This “black box” settlement is consistent with Commission precedent as reasonable and in the public interest. *Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*, Docket No. R-2014-2406274 (Final Order entered December 10, 2014); *Pa. Pub. Util. Comm’n v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Final Order entered April 23, 2014); *Pa. Pub. Util. Comm’n v. PPL Electric Utils. Corp.*, Docket No. R-2010-2161694 (Final Order entered December 16, 2010).

8. The proposed Joint Settlement submitted by the Joint Petitioners with my proposed addendums is just, reasonable, and in the public interest. 66 Pa.C.S. § 315(a); *Pa. Pub. Util. Comm’n v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Borough of Hanover – Hanover Municipal Water Works shall not place into effect the rates, rules, and regulations contained in Supplement No. 32 to Tariff Water – Pa. P.U.C. No. 3 as filed on June 29, 2021.

2. That the Borough of Hanover – Hanover Municipal Water Works use the annual depreciation accrual rates indicated in Exhibit No. JJS-3 for the purpose of calculating its Distribution System Improvement Charge.

3. That the Borough of Hanover – Hanover Municipal Water Works use account numbers, and subaccounts where applicable, that conform with the most recent Uniform System of Accounts prescribed by the National Association of Regulatory Utility Commissioners for Class A water utilities in any future Distribution System Improvement Charge rate filings until directed otherwise by the Commission.

4. That the Borough of Hanover – Hanover Municipal Water Works file with the Secretary, at Docket No. R-2021-3026116, copies of the schedule comparing the projected plant additions and retirements for the Future Test Year with actual plant additions and retirements for the Future Test Year, no later than April 1, 2022, and copies of the schedule providing a similar comparison for the Fully Projected Future Test Year no later than April 1, 2023 .

5. That within ten (10) days of the Commission’s Final Order in this matter, the Borough of Hanover – Hanover Municipal Water Works provide a written notice to each customer (i.e., the affected municipality or municipalities) of the location of each fire hydrant in the jurisdictional area that the Borough of Hanover – Hanover Municipal Water Works believes cannot provide minimum fire flow of 500 gallons per minute at 20 pounds per square inch, and to verify to the Commission upon compliance with this requirement.

6. That the Borough of Hanover – Hanover Municipal Water Works revise Page No. 4 of the tariff supplement attached as Appendix A to the Joint Petition for Approval of Settlement of Rate Investigation to include the Borough of Hanover – Hanover Municipal Water Works’s existing monthly base charges, consistent with the monthly base charges indicated in the Joint Petition for Approval of Settlement of Rate Investigation’s Appendix B.

7. That the rates, terms, and conditions contained in the Joint Petition for Approval of Settlement of Rate Investigation filed on December 6, 2021, by the Borough of Hanover – Hanover Municipal Water Works, the Bureau of Investigation and Enforcement of the Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, and Hanover Foods Corporation, with proposed addendums, be approved and adopted consistent with the discussion contained herein.

8. That upon the Commission's approval of this Joint Petition for Approval of Settlement of Rate Investigation with addendums, the Borough of Hanover – Hanover Municipal Water Works will be permitted to charge the rates for water service set forth in the

tariff supplement in the form attached to the Joint Petition for Approval of Settlement of Rate Investigation as Appendix A.

9. That the Borough of Hanover – Hanover Municipal Water Works may file a tariff or tariff supplement in substantially the same form as that attached as Appendix “A” to the Joint Petition for Approval of Settlement of Rate Investigation with the changes ordered in Ordering Paragraph 6, to become effective upon at least one day's notice following entry of the Commission Order approving the Joint Petition for Approval of Settlement of Rate Investigation, for service on or after March 28, 2022, which tariff or tariff supplement increases rates so as to produce an increase in annual operating revenues of not more than \$1,044,980.

10. That upon acceptance of the appropriate compliance filing, the formal Complaint of the Office of Consumer Advocate filed at Docket No. C-2021-3027274 be deemed satisfied and marked closed.

11. That upon acceptance of the appropriate compliance filing, the formal Complaint of the Office of Small Business Advocate filed at Docket No. C-2021-3027361 be deemed satisfied and marked closed.

12. That upon acceptance of the appropriate compliance filing, the formal Complaint of Hanover Foods Corporation filed at Docket No. C-2021-3027807 be deemed satisfied and marked closed.

13. That upon acceptance of the appropriate compliance filing, the Commission’s inquiry, and investigation at Docket R-2021-3026116 be marked closed.

Date: December 29, 2021

_____/s/
F. Joseph Brady
Administrative Law Judge