

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of The Borough of Hanover –	:	
Hanover Municipal Waterworks	:	
for Approval of a Distribution System	:	P-2021-3026854
Improvement Charge	:	
Hanover Foods Corporation	:	
	:	
v.	:	C-2021-3027810
	:	
The Borough of Hanover – Hanover	:	
Municipal Water Works	:	

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision recommends that the Joint Petition for Settlement be approved in its entirety without modification because it is in the public interest and is supported by substantial evidence. This Recommended Decision finds that the Settlement complies with relevant Sections of the Public Utility Code regarding distribution system improvement charges (DSIC) and is consistent with Commission regulations promoting settlements.

The DSIC tariff pages will show an effective date of January 1, 2023. Thus, the last reasonable public meeting for the Commission to act is December 8, 2022.

HISTORY OF THE PROCEEDING

On June 29, 2021, the Borough of Hanover – Hanover Municipal Waterworks (Borough or Petitioner) filed with the Pennsylvania Public Utility Commission (Commission) its Petition for Approval of a DSIC to recover costs related to the repair, replacement, and improvement of eligible property. A Long-Term Infrastructure Improvement Plan 2023 – 2027 (LTIIIP) was included with the Petition as Appendix B.

On July 19, 2021, the Office of Consumer Advocate (OCA), through its counsel, filed an Answer and comments to the Borough's proposed LTIIIP. Additionally, on July 20, 2021, the OCA filed a Notice of Intervention and a Public Statement.

On July 19, 2021, the Office of Small Business Advocate (OSBA), through its counsel, filed a Notice of Intervention and Public Statement to the Borough's Petition.

On August 9, 2021, Charis Mincavage, Esq. filed a Notice of Appearance and a formal Complainant on behalf of Hanover Foods Corporation (HFC). The Complaint was docketed at C-2021-3027810.

On August 23, 2021, Erika L. McLain, Esq. filed a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E).

On September 8, 2021, a Prehearing Conference Notice was issued scheduling an initial prehearing conference for September 16, 2021.

Also on September 8, 2021, a Prehearing Order was issued informing the parties of the procedures applicable to this proceeding.

On September 14, 2021, Prehearing Memoranda were filed by the Borough, OCA, OSBA, I&E, and HFC.

A telephonic Prehearing Conference was held on September 16, 2021. Counsel for the Borough, OCA, OSBA, I&E, and HFC participated. The parties agreed to postpone the creation of a litigation schedule to facilitate settlement discussions.

On September 28, 2021, I issued Prehearing Order No. 2, postponing the creation of a litigation schedule, and requiring the Borough to file a status report within 45 days.

On October 28, 2021, Counsel for the Borough advised me via electronic mail that a settlement of all issues resolving the proceeding was reached.

On November 18, 2021, the Commission issued an Order approving the LTIP portion of the DSIC petition.¹

On November 19, 2021, the Borough filed a Joint Petition for Settlement made and entered into by and between the Borough, OCA, I&E, and HFC (hereinafter collectively referred to as "Joint Petitioners"), along with Statements in Support from the Joint Petitioners.²

Also on November 19, 2021, the Borough filed a Joint Motion for Admission of Testimony and Exhibits on behalf of the Joint Petitioners.

It should be noted that on June 29, 2021, the Borough filed a request with the Commission to increase its water service rates which was docketed at R-2021-3026116 (rate investigation) and presided over by me. Due to the fact that provisions in the DSIC proceeding related to provisions in the rate investigation, it was agreed that I would not issue a recommended decision until after a final order was issued by the Commission in the rate investigation. The Commission issued a final order in the rate investigation on February 3, 2022, adopting my Recommended Decision.

¹ The Order entered November 18, 2021, approved the Borough's LTIP Petition and directed the Borough to file an Amended LTIP. In compliance with the Order entered November 18, 2021, the Borough filed an Amended LTIP on December 20, 2021. By Secretarial letter dated December 21, 2021, the Commission advised the Borough that its Amended LTIP was sufficient.

² On November 19, 2021, OSBA filed a letter stating it did not oppose the Joint Petition for Settlement.

On February 15, 2022, I issued an Interim Order granting the Joint Motion for Admission of Testimony and Exhibits.

On February 25, 2022, I received supplemental statements in support of ¶11.b. of the Joint Petition for Settlement from the Borough and OCA.

On March 1, 2022, I issued an Interim Order closing the record. For the reasons set forth below, the Settlement will be recommended for approval in its entirety without modification.

FINDINGS OF FACT

1. On June 29, 2021, the Borough filed a Petition for Approval of a DSIC for its water operations and a proposed DSIC tariff to recover costs related to the repair, replacement, and improvement of eligible property.

2. The Borough 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.

3. On July 19, 2021, the OCA, through its counsel, filed an Answer and comments to the Borough's proposed LTIP.

4. On July 19, 2021, the OSBA, through its counsel, filed a Notice of Intervention and Public Statement to the Borough's Petition.

5. On July 20, 2021, the OCA filed a Notice of Intervention and a Public Statement.

6. On August 9, 2021, HFC filed a formal Complaint docketed at C-2021-3027810.

7. On August 23, 2021, a Notice of Appearance on behalf of I&E was filed.
8. A LTIP was included with the Petition as Appendix B.
9. On November 18, 2021, the Commission issued an Order approving the LTIP portion of the DSIC petition.
10. On November 19, 2021, the Borough filed a Joint Petition for Settlement, along with Statements in Support on behalf of the Joint Petitioners.
11. On November 19, 2021, the OSBA filed a formal notice that it does not oppose the Joint Petition for Settlement.

TERMS OF THE SETTLEMENT

The Settlement is nine (9) pages containing fifteen (15) numbered paragraphs. Appendix A to the Settlement contains a form of tariff supplement modified to reflect the terms and conditions of the Settlement. Appendices B, C, D, and E are the respective statements of the Borough, I&E, the OCA, and HFC in support of the Settlement.

The essential terms of the Settlement are contained in Paragraph 11, quoted below *verbatim* and, for ease of reference, retain the same numbers and headings as they appear in the Settlement:

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.

Settlement ¶ 11.

DISCUSSION

A. Applicable Law

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a

“burden of proof” standard, as is utilized for contested matters. *Pa. Pub. Util. Comm’n, v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011)(*Lancaster*). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.*(citing, *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991)(*CS Water & Sewer*).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *HIKO Energy, LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079, 1094 (Pa. Cmwlth. 2017); *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016), *aff'd*, 209 A.3d 246 (Pa. 2019).

The subject matter of this proceeding is governed by Act 11 of 2012 (Act 11) which amended Chapters 3, 13 and 33 of the Public Utility Code. Act 11 provided jurisdictional water and wastewater utilities, electric distribution companies, and natural gas distribution companies (NGDCs) with the ability to implement a distribution system improvement charge (DSIC) to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible distribution property that is part of the utility’s distribution system. The Commission established various procedures and guidelines necessary to implement Act 11. *See, e.g., Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, (Final Implementation Order entered Aug. 2, 2012).

As a precondition to the implementation of a DSIC, Section 1352 states that a utility must file a Long-Term Infrastructure Improvement Plan (LTIIP). 66 Pa.C.S. § 1352. As noted above, by Opinion and Order entered in this case on November 18, 2021, the Commission approved the LTIIP portion of the instant DSIC petition.

The Settlement is conditioned upon the standard terms and conditions found in most settlements submitted to the Commission. This includes that the Settlement is made

without any admission against, or prejudice to, any position that any party may adopt in the event of subsequent litigation and that the Settlement may not be cited as precedent in any future proceeding unless required for implementation. Settlement at ¶13. The parties reserved their procedural rights to argue their respective positions if the Commission does not approve the Settlement and the proceeding continues. *Id.* at ¶14. The parties also noted the parties may elect to withdraw from the Settlement and proceed with litigation if the Commission modifies the terms and conditions. *Id.*

The OSBA indicated that it does not oppose the Settlement.³

B. Analysis

1. DSIC Effective Date

In the Settlement, the parties agreed that that the DSIC tariff pages will show an effective date of January 1, 2023. 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 projected future test year base rate recovery in the Borough's base rate case docketed at R-2021-3026116.⁴

The Borough states that this settlement term effectively coordinates the implementation of the DSIC with the determination of the plant in service date in the base rate proceeding. Petition Appendix B at 5-6.

I&E's position is that this settlement term is in the public interest because it prevents Hanover from over recovering on plants 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. Petition Appendix C at 3.

³ See Note 2, *supra*.

⁴ The base rate in the rate investigation docketed at R-2021-3026116 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.

In its Statement in Support, the OCA discussed its original concerns with this provision due to the fact that the Borough's LTIP is for the five-year period beginning on January 1, 2023, which is more than one year after the proposed implementation of the DSIC. Petition Appendix D at 3. The OCA submitted that choosing a later period for the LTIP may have created an improper disconnect between the LTIP and the DSIC. *Id.* The OCA pointed out that Section 1352 of the Public Utility Code requires the Commission to promulgate regulations that "ensure that a distribution system improvement charge shall terminate if the commission determines that the utility is not in compliance with the approved [LTIP]." *Id.* (citing 66 Pa.C.S. § 1352(b)). Further, the OCA stated that 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. *Id.* (citing 52 Pa. Code § 121.8(c)). Thus, the OCA's position is that the existence of an approved DSIC mechanism is tied to LTIP compliance. *Id.* (citing 52 Pa. Code §§ 121.5(c), 121.7(d), 121.8(c)). Accordingly, the OCA concludes, 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 LTIP period. *Id.*

I concur with the Joint Petitioners. Section 1353 of the Public Utility Code allows the Borough to timely recover 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. 66 Pa.C.S. § 1353(a). This provision in the Settlement addresses the concerns raised by the OCA regarding the timing of the implementation of the DSIC in relation to the approved LTIP. Furthermore, this provision ensures that only eligible property that is part of the Company's distribution system will be included in the DSIC and that the goals of Section 1353 of maintaining adequate, efficient, safe, reliable, and reasonable service are satisfied. As a result, I find this provision of the Settlement is in the public interest and should be approved without modification.

2. Jurisdictional Property

The Borough provides service inside and outside of its municipal boundaries (and is not a municipal authority). As such, only its Outside-Borough service is regulated by the

Commission under the terms and provisions of the Public Utility Code. 66 Pa. C.S. § 101, *et seq.* The Borough is believed to be the first municipal service provider with jurisdictional and non-jurisdictional service to implement a DSIC. In its Answer, the OCA raised the concern that it would be necessary to structure the DSIC to exclude projects for service to Inside-Borough customers that are not regulated by the Commission. OCA Answer at 2-3.

The parties agreed that the DSIC should not recover costs of eligible property that are not related to the provision of jurisdictional utility service (*i.e.*, Inside-Borough). Paragraph 11.b of the Settlement specifies, for purposes of Hanover’s DSIC formula, how those projects will be distinguished. Generally, property will be ascribed as jurisdictional/non-jurisdictional for DSIC recovery based on physical location. For example, the location of an upgraded distribution main, hydrant, meter, or service outside the Borough or inside the Borough will determine if the cost is ascribed to jurisdictional or non-jurisdictional service.

Nevertheless, the Joint Petitioners recognized that there may be projects inside the Borough that are a necessary part of the continued provision of Outside-Borough service. Therefore, they negotiated a DSIC calculation that would apportion a percentage of cost of upgrades and replacement of facilities located inside the Borough to Commission jurisdictional, Outside-Borough customers based on the allocation factors in the Borough’s cost of service study (COSS) which was filed as Exhibit CEH-1 in the base rate proceeding Docketed at R-2021-3026116, inclusive of any modifications to that study adopted in the final Commission Order in that proceeding.

At this point, it is necessary to recognize that Paragraph 11.b would apply to the Borough’s DSIC going forward until changed by the Commission. This is significant because in the concurrent LTIP approved by the Commission, the Commission noted that the Borough was not planning any Inside-Borough projects related to service of jurisdictional customers (“apportioned improvement projects”). Accordingly, in approving the LTIP, the Commission did not reach or decide whether distribution system improvement projects within the Borough that relate to service of jurisdictional customers “are eligible property as defined in 66 Pa.C.S. § 1351 and thus eligible for inclusion in an LTIP.” November 18, 2021 Order, at 6-8.

The Borough's position is that the need for a new or different Inside-Borough project (or projects) that is necessary for Outside-Borough service, not initially anticipated and reflected in the approved LTIP, may arise. Petition Appendix B at 7. If this occurs, the Borough suggests, with an approved methodology in place, it would not be necessary for the Borough to petition the Commission for a proposed modification of its DSIC calculation methodology in this scenario because one would already be in place. *Id.* The Borough submits that the savings in time and resources by having an approved allocation framework in place are a clear benefit to all parties of interest, the public, and the Commission. *Id.*

The OCA's position is that it is reasonable and appropriate to address apportioned improvement projects for DSIC purposes in this proceeding and Paragraph 11.b should be adopted. Petition Appendix D at 4-5. First, the OCA submits that LTIP projects are fluid and can change during the course of an LTIP and, unlike the LTIP, the DSIC does not have a fixed duration. *Id.* The DSIC formula approved for Hanover is intended to remain in place even if the underlying LTIP or specific projects change. Therefore, specifying how projects will be distinguished for purposes of cost recovery and what allocation will be used for apportioned improvement projects will protect jurisdictional customers if the Borough's plans do change, by ensuring jurisdictional customers do not pay costs through the DSIC that do not benefit jurisdictional service. *Id.* The OCA also submits that, as proposed in Paragraph 11.b, the allocation for DSIC rates would be consistent with how costs are allocated for base rates.⁵ *Id.*

Second, the OCA submits that if the Borough's plans change to include apportioned improvement projects (during the current LTIP period or in the future), the Commission will have the opportunity to review and rule on such changes for LTIP purposes as provided by the LTIP regulations set forth at 52 Pa. Code §§ 121.1-121.8 (*i.e.*, when the Commission reviews the changes as part of an LTIP modification, Annual Asset Optimization plan, Commission periodic review or new LTIP). *Id.*

⁵ The OCA also points out that the Borough's cost of service study and allocation factors will continue to be subject to review in future base rate cases, so they can be adjusted as appropriate.

I concur with the Joint Petitioners. This portion of the Settlement 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. As a result, I find this provision of the Settlement is reasonable, in the public interest, and should be approved without modification.

3. Pre-Tax Return and State Tax Adjustment Surcharge

The Settlement recognizes that 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 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 it is utilizing a 0% tax rate to reflect that it is not subject to federal or state income taxes. *Id.*

The OCA states these revisions 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. Petition Appendix D at 5. 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). The OCA states that this recognizes that the Borough does not have a STAS and makes the tariff language consistent with this fact. *Id.* at 5-6.

I concur with the Joint Petitioners that these modifications to the proposed DSIC tariff supplement are appropriate as they recognize the reality that the Borough does not pay federal or state taxes. Thus, I find this provision of the Settlement is reasonable, in the public interest, and should be approved without modification.

Lastly, the proposed Settlement provides that if the Borough 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). I concur with the OCA that 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 Commission-jurisdictional customers is supported and appropriate. *Id.* at 6.

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 complies with the various provisions of the Public Utility Code regarding DSICs and 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. 66 Pa.C.S. § 1353; *see also, Implementation of Act 11 of 2012, supra; Lancaster, supra; CS Water & Sewer, supra.* Furthermore, the Settlement is also supported by substantial evidence because the extensive pre-served testimony was admitted into the record of this proceeding. 2 Pa.C.S. § 704. Accordingly, I recommend that the Settlement be approved in its entirety without modification consistent with the Commission's policy to promote settlements and that the formal complaint filed be dismissed. 52 Pa. Code § 5.231.

CONCLUSIONS OF LAW

1. The policy of the Commission is to promote settlements. 52 Pa. Code §§ 5.231(a) and 69.401.

2. 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 (Opinion and Order entered Dec. 20, 2018).

3. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

4. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *HIKO Energy, LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079, 1094 (Pa. Cmwlth. 2017); *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016), *aff'd*, 209 A.3d 246 (Pa. 2019).

5. Jurisdictional water and wastewater utilities, electric distribution companies and natural gas distribution companies may Petition the Commission to implement a distribution system improvement charge to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible distribution property that is part of the utility's distribution system. 66 Pa.C.S. § 1353.

6. The Commission established various procedures and guidelines necessary to implement Act 11. *See, e.g., Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered Aug. 2, 2012).

7. The Joint Petition for Settlement is in the public interest and should be adopted in its entirety without modification. 66 Pa.C.S. § 1353; 52 Pa. Code § 5.231.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement submitted on November 19, 2021, by and between the Borough of Hanover – Hanover Municipal Waterworks, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, and Hanover Foods Corporation be approved in its entirety without modification.

2. That the Petition for Approval of a Distribution System Improvement Charge filed by the Borough on June 29, 2021, be approved, subject to the following conditions, consistent with the Joint Petition for Settlement, and the Borough be granted special permission to file a tariff supplement in the form attached thereto 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 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.

3. That the formal complaint filed by Hanover Foods Corporation at Docket Number C-2021-3027810 be deemed satisfied and marked closed.

4. That the investigation at Docket No. P-2021-3026854 be marked closed.

Date: March 16, 2022

_____/s/
F. Joseph Brady
Administrative Law Judge