

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tim S. McKercher	:	C-2020-3021080
Tracy L. Albrecht	:	C-2020-3022354
Leonard and Sabrina Bosse	:	C-2020-3022724
Dwight and Judy Dubs	:	C-2020-3022725
Keith C. Keller and Susan A. Belt	:	C-2020-3022804
	:	
v.	:	
	:	
Hanover Municipal Water Works	:	

**RECOMMENDED DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

This decision recommends approval of a settlement among a water utility, certain customers, and the Office of Consumer Advocate. The terms of the settlement resolve a dispute regarding the cost burden of the customers’ service lines in connection with the replacement of a water main. The decision also recommends the approval of a limited waiver of the water utility’s tariff.

**HISTORY OF THE PROCEEDINGS**

On July 28, 2020, the Complainant, Tim S. McKercher, filed a Formal Complaint against Hanover Municipal Water Works (HMWW). Mr. McKercher challenged a proposed line abandonment and replacement project known as the “Beck Mill Road Water Line Replacement

Project,” which he alleged was too costly and imposed an undue financial burden on him because the project would require him to bear the cost of installation a new service line.

On August 19, 2020, HMWW filed an Answer and New Matter and Preliminary Objections to the Complaint.<sup>1</sup> On August 30, 2020, the Complainant filed motions for extensions of time to respond to the new matter and the preliminary objections in order to secure the advice of counsel.

On September 10, 2020, the Office of Consumer Advocate (OCA) filed an intervention and public statement. OCA noted that it was also filing an intervention in the Petition for Declaratory Order filed by HMWW on August 19, 2020.

This matter was assigned to me on September 21, 2020 and scheduled for a prehearing conference on Tuesday, October 13, 2020. I issued a prehearing conference order on September 22, 2020, which stated that the preliminary objections of HMWW would be held in abeyance in order to provide Mr. McKercher an opportunity to respond.<sup>2</sup>

On October 7, 2020, Mr. McKercher filed an amended complaint, which modified some of the language of his original complaint, and also included “verifications” of other affected customers in support of his complaint.

On October 9, 2020, Tracy L. Albrecht, another customer of HMWW, filed a formal complaint<sup>3</sup> which also challenged the Beck Mill Road Water Line Replacement Project and alleged that the project is too costly and imposed an undue financial burden.

The prehearing conference convened as scheduled. Mr. McKercher and Mr. Albrecht appeared. Attorney Scott T. Wyland appeared on behalf of HMWW. Attorneys

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<sup>1</sup> HMWW also filed a Petition for Declaratory Order on August 19, 2020, which was docketed at P-2020-3021398. That proceeding is currently assigned to the Commission’s Law Bureau.

<sup>2</sup> See *Carlock v. United Tel. Co. of Pa.*, Docket No. F 00163617 (Order entered July 14, 1993).

<sup>3</sup> At Docket No. C-2020-3022354.

Christy Appleby and Erin Gannon appeared on behalf of OCA. After oral argument about HMWW's preliminary objection, the preliminary objections were dismissed. On October 13, 2020, I memorialized the rulings made at the prehearing conference and the parties were directed to discuss a procedural schedule and present a Status Report no later than November 6, 2020.

On November 4, 2020, Leonard and Sabrina Bosse, and Dwight and Judy Dubs , and Keith C. Keller and Susan A. Belt also filed formal complaints.<sup>4</sup> These individuals were also HMWW customers affected by the Beck Mill Road Water Line Replacement Project. Their complaints were virtually identical to the complaint filed by Mr. McKercher. At the request of the parties, the complaints were all consolidated and referred to the Commission's Office of Mediation for assignment to a mediator.

Counsel for OCA notified me by email dated February 11, 2022, that the parties had achieved a full and complete settlement which resolved all of the formal complaints. The parties filed a Joint Petition for Settlement on February 17, 2022. All of the parties signed the Joint Petition for Settlement (Settlement). The Settlement included Appendices A and B which are the statements in support of HMWW and OCA, along with five attachments, which support the Settlement terms.

As part of the Settlement, the parties stipulated to facts which support the terms agreed to in the Settlement. The agreement of the parties to the relevant facts was further authenticated by the verification of P. Eric Mains, P.E. of Hanover Borough, in Attachment 1 of the Settlement, as well as the documents provided in Attachments 2-5 of the Settlement. Attachments 2-5 include: HMWW Tariff Supplement No. 31 to Water-PA PUC No. 3; HMWW letter to Mr. McKercher dated May 5, 2020; Maps; HMWW letters to formal complainants dated June 11, 2020.

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<sup>4</sup> Docket Nos. C-2020-3022724, C-2020-3022725, and C-2020-3022804, respectively.

## FINDINGS OF FACT

1. Hanover Municipal Water Works is a certificated public utility under the Commission's jurisdiction in respect to its provision of water service to certain residential properties in Penn Township, beyond the municipal boundaries of the Borough of HMWW. (Stipulation ¶ 2)

2. Section 4.1 of HMWW's Tariff provides that HMWW will "make all connections to its mains, furnish, install and maintain all service lines from the main to the curb, including the service pipe, corporation stop, curb stop, curb box, or other appurtenances, all of which will be the property of the Water Works and shall be accessible to and under the exclusive control of the Water Works." Supplement No. 31 to Water-PA P.U.C. No. 3, § 4.1. *See* Attachment 2 (relevant pages from HMWW's current Tariff). (Stipulation ¶ 3)

3. Section 4.3 of the Tariff provides that "[t]he service line from the main to the curb line shall be installed and maintained at the expense of the Water Works as an integral part of its distribution system." Section 4.3 further provides that "[t]he service line and all appurtenances installed from the curb line to the customer's premises shall be installed and maintained at the expense of the customer." Supplement No. 31 to Water-PA P.U.C. No. 3, § 4.3. (Stipulation ¶ 4)

4. On May 5, 2020, the Borough sent a letter to the owners of 11 properties (Affected Property Owners) indicating that it would begin to construct water system improvements on Beck Mill Road as part of the Borough's 2020 Water System Improvements Project. *See* Attachment 3 (HMWW letter to Mr. McKercher). (Stipulation ¶ 5)

5. The 11 properties at issue and the Affected Property Owners are as follows:

- a. 355 Park Heights Blvd., Hanover, PA – John R. McGrew & Wendy J. Bish-McGrew

- b. 375 Park Heights Blvd., Hanover, PA – Tim S. & Susan L. McKercher
- c. 390 Park Heights Blvd., Hanover, PA – Tracey L. Albrecht
- d. 391 Park Heights Blvd., Hanover, PA – Logan Etzler & Chelsea Barnett<sup>5</sup>
- e. 410 Park Heights Blvd., Hanover, PA – Keith Keller & Susan Belt – Keith Keller & Susan Belt
- f. 430 Park Heights Blvd., Hanover, PA 17331 – Thornton P. & Mary B. Shriener
- g. 415 Beck Mill Rd., Hanover, PA 17331 – Dwight D. & Judith S. Dubs
- h. 419 Beck Mill Rd., Hanover, PA 17331 – Leonard E. & Sabrina E. Bosse
- i. 421 Beck Mill Rd., Hanover, PA 17331 – Leonard E. & Sabrina E. Bosse
- j. 435 Beck Mill Rd., Hanover, PA 17331 – Bernard E. & Judy A. Spangler
- k. 445 Beck Mill Rd., Hanover, PA 17331 – Shilo W. & Michelle R. Mitchell

(Stipulation ¶ 6)

6. The Project includes the abandonment of an existing 12-inch water main located within private property and the installation of a new 12-inch water main located within the Beck Mill Road right-of-way. *See* Attachment 4 (maps showing the approximate location of the existing main). (Stipulation ¶ 7)

7. HMWW estimates that the existing 12-inch transmission main was installed sometime between 1931 and 1933. (Stipulation ¶ 8)

8. HMWW estimates that it has been providing water service to the Formal Complainants, or former owners of their properties, through service lines connected to the existing 12-inch main for more than 33 years:

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<sup>5</sup> Logan Etzler & Chelsea Barnett are the current owners of this property that was previously owned by Gary and Patricia Waltman.

375 Park Heights Blvd.	1966
390 Park Heights Blvd.	1988
410 Park Heights Blvd.	1971
415 Beck Mill Rd.	1982
419 and 421 Beck Mill Rd.	1962

(Stipulation ¶ 9)

9. The existing 12-inch main is made of cast iron, and the joints are made of lead. It has a history of leaks at the lead joints. (Stipulation ¶ 10)

10. The existing 12-inch transmission main has a dual functionality in that the main conveys water from the water treatment plant to the Parr’s Hill Reservoirs, where finished water is stored, and provides water to customers located between the water treatment plant and the reservoirs. (Stipulation ¶ 11)

11. The new 12-inch main will serve the same purpose. (Stipulation ¶ 12)

12. It is anticipated that installation of the new 12-inch main will be completed on June 1, 2022. (Stipulation ¶ 13)

13. The new 12-inch main will be made of cement-lined ductile iron. (Stipulation ¶ 14)

14. HMWW intends for the end portions of the existing main to be capped and filled with grout, and the remaining portion of the existing main to be abandoned in place. (Stipulation ¶ 15)

15. In 2020, the estimated cost of the Project was \$1,253,709.96. (Stipulation ¶ 16)

16. On May 19, 2020, HMWW staff and engineering consultant met with available, Affected Property Owners to discuss the proposed location of the new facilities. (Stipulation ¶ 17)

17. On June 11, 2020, HMWW sent letters to the Affected Property Owners, which provided estimates specific to each property for the cost of relocating their customer service line, identified pursuant to HMWW’s Tariff as the service line from the curb stop to the home (Customer Service Line). *See* Attachment 5 (HMWW letters to Formal Complainants). The estimates for the Formal Complainants were as follows:

Tim McKercher	\$5,175.75
Tracey Albrecht	\$5,050.00
Keith Keller and Susan Belt	\$2,657.23
Dwight Dubs and Judith Dubs	\$2,644.00
Leonard Bosse and Sabrina Bosse (419 Beck Mill Rd)	\$2,216.00
Leonard Bosse and Sabrina Bosse (412 Beck Mill Rd)	\$2,708.88
Total	\$20,451.86

(Stipulation ¶ 18)

18. The estimates do not include the cost of reconfiguring plumbing within the Affected Property Owners’ homes where necessitated by the relocation of their Customer Service Lines. (Stipulation ¶ 19)

19. The June 11, 2020 letter stated that HMWW could relocate the Affected Property Owner’s Customer Service Line and accept payment for this work via monthly installments, up to 18 months or, alternatively, the Affected Property Owners could each proceed with the installation of their new Customer Service Line using a private contractor at their own cost. (Stipulation ¶ 20)

20. HMWW has entered into binding agreements with the following Affected Property Owners, who are not Formal Complainants, establishing the terms and conditions of HMWW's relocation of their Customer Service Lines: (1) Bernard E. & Judy A. Spangler; (2) Thornton P. & Mary B. Shriner; and (3) John R. McGrew & Wendy J. Bish-McGrew (collectively the Settled Customers). (Stipulation ¶ 21)

21. The following Affected Property Owners are neither Formal Complainants nor Settled Customers: (1) Shilo W. & Michelle R. Mitchell; and (2) Logan Etzler & Chelsea Barnett (collectively the Other Affected Customers). (Stipulation ¶ 22)

### SETTLEMENT TERMS

The Joint Petitioners agree as follows:

1. Hanover<sup>[6]</sup> will offer the same terms identified in this Settlement to the Other Affected Customers (the Offer). Hanover will provide the Other Affected Customers 30 days from the date the Offer is made to accept its terms. As to any Other Affected Customers who choose not to accept the terms of the Offer within the time allowed, Hanover's Tariff shall still control. The Joint Petitioners do not agree on whether Hanover's Tariff applies to relocation of existing Customer Service Lines and reserve their rights to make or challenge such claim as to customers who are not: (1) Formal Complainants in this proceeding; or (2) Other Affected Customers who have accepted the terms of the Offer pursuant to this Paragraph.

2. Each Formal Complainant will pay to Hanover a sum equal to the lesser of \$750.00 or 20% of the actual cost of relocating each of their Customer Service Lines (the Work).

3. The Borough will perform the Work for each Formal Complainant through its own forces or by a retained contractor.

4. To the extent practicable, prior to installation, the Borough will meet with each Formal Complainant regarding the location and orientation of their Customer Service Line. Unless

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<sup>6</sup> The Settlement terms are quoted verbatim. "Hanover" or "The Borough" is referenced as HMWW elsewhere in this decision.

further changes are discussed and agreed to by the Borough and the Formal Complainant at that meeting, the plans developed with the Formal Complainant in spring/summer of 2020 for the location and orientations of their Customer Service Lines and materials to be used remain in effect. Said location and orientation of the Customer Service Lines will, however, ultimately be within the discretion of the Borough.

5. The Borough will provide a 12-month warranty for the Customer Service Lines of the Formal Complainants. For the Formal Complainants whose Customer Service Lines are installed by the Borough or its contractor, the Borough will repair or replace any defect in workmanship and materials for a period of 12-months after the Customer Service Line is put in service.

6. Hanover or its contractors are hereby authorized to enter the Formal Complainants' properties to perform the Work.

7. Upon completion of the Work, the Borough will restore the Formal Complainants' properties, including but not limited to sidewalks, driveways, landscaping or sod, as nearly as practicable to their former condition.

8. Upon completion of the Work, the Borough will invoice each Formal Complainant based upon the payment terms specified above.

9. Payment on the invoiced sum will be due by the Formal Complainants within thirty days of the date of invoice.

10. In the event of non-payment for the Work by any Formal Complainant, the Borough will retain its ability to pursue collection of the delinquent amount by any legal method including, but not limited to, filing of a municipal lien.

11. All of Hanover's Work and any contribution it makes toward the cost of the Work will relate only to the relocation of the Customer Service Line for the Formal Complainants. Hanover will not in any way be responsible for any internal plumbing work or costs incurred by a Formal Complainant. The Joint Petitioners agree that Hanover shall be permitted to record the cost for replacement of the Formal Complainants and Other Affected Customers' Customer Service Lines to a regulatory asset account. In the first base rate proceeding filed after approval of the Settlement, Hanover will be permitted a ratemaking amortization of the amounts booked to the regulatory asset account. Hanover agrees that it will not be permitted to recover interest or return on any unamortized

balance. The costs will not be included in rate base. The amortization period and the allocation among customer classes of the recovery of amortized costs will be determined in the base rate proceeding. Hanover will support the claimed operating expenses with invoices or records of payment, which the OCA reserves the right to review. No amortization will commence until the effective date of new rates in the base rate proceeding that establishes the amortization. The regulatory asset account will remain in place until the eligible costs are finally amortized. The OCA and Hanover recognize that this provision does not bind other parties to the base rate proceeding.

12. Costs that Hanover incurs to connect the relocated Customer Service Lines for the Formal Complainants and Other Affected Customers to the new main, *i.e.*, to install a service line from the main to the curb box, can be booked to rate base and will begin depreciating when the line is placed into service. For ratemaking purposes, the line can be claimed in Hanover's next base rate case.

13. To the extent necessary to effect the terms of this Settlement, the parties request that the Commission approve a limited waiver of Hanover's Tariff rules providing that customers are responsible for the installation and replacement of their Customer Service Lines. This waiver shall be limited to Hanover's relocation of Customer Service Lines as part of the Project for: (a) the Formal Complainants and (b) Other Affected Customers who have accepted the terms of the Offer pursuant to Paragraph IV.1. Hanover will not take ownership of, or maintain in the future after the 12-month warranty period pursuant to Paragraph IV.5. above, the Formal Complainants' Customer Service Lines.

14. The terms and conditions of the agreements executed between Hanover and the Settled Customers are unaffected by this Settlement.

15. The parties agree that, after Hanover files a verified letter confirming that the Formal Complainants have been reconnected to the water system in accordance with the terms of the Settlement, and the Other Affected Customers and Settled Customers have been reconnected to the water system in accordance with the terms of their agreements with Hanover, the Formal Complaint Proceedings shall be marked closed and Hanover will file a Petition for Leave to Withdraw its Petition for Declaratory Order.

Joint Petition for Settlement at pp. 10-13.

The Settlement also included the usual “terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future rate cases by any particular position taken in this case. If the Settlement is approved without modification, the parties have agreed to waive their individual rights to file exceptions with regard to the Settlement. These additional terms and conditions will not be repeated here verbatim. The reader is directed to pages 13-14 of the Settlement itself.

### DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases, including enforcement proceedings.<sup>7</sup> Settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue that the Commission considers is whether the agreement reached suits the public interest.<sup>8</sup> In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

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<sup>7</sup> See 52 Pa. Code § 5.231.

<sup>8</sup> *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). See also *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm’n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

HMWW, OCA and the Complainants have agreed to settlement terms, which they state resolves the issues raised in the complaints. The Settlement also makes provision for customers who did not file formal complaints. As explained in more detail below, I recommend that the Settlement be approved without modification, including the request for a limited waiver of HMWW's customer-owned service line tariff provision.

The crux of the formal complaints was the substantial investment HMWW asked each of the complainants to bear, to replace their service lines in connection with the Beck Mill Road Water Line Replacement Project. HMWW took the position that according to its tariff, service lines were customer-owned, therefore the customer was responsible for the replacement of the line necessitated by the replacement of the water main. However, in the Complainant's view, it was unfair to require them to bear the cost of the service line replacement when they had no control over HMWW's decision to replace the main in a manner that required the replacement. OCA was in agreement with the position of the Complainants. The Settlement makes provision for each customer to contribute to the cost of the replacement of the service lines, for the rate treatment of the costs which HMWW has agreed to pay, as well as other terms which balance the needs and interests of HMWW, the Complainants and other customers affected by the project.

#### **Formal Complainants' Maximum Financial Responsibility and Terms of Payment (Settlement ¶¶ IV.2-3, 8-10)**

As initially proposed by HMWW, the Formal Complainants would have been required to pay costs ranging from \$2,216.00 to \$5,175.75. Settlement ¶ III.18 and Att. 5. Each of the Formal Complainants objected to HMWW's proposal to require the impacted customers to pay 100% of the costs. The Settlement provides that each Formal Complainant will pay substantially less. Settlement ¶ 2. Specifically, each property owner will pay the lesser of \$750.00 or 20% of the actual cost of relocating each of their Customer Service Lines (the Work). This means that no Formal Complainant will contribute more than \$750.

OCA and HMWW fully support the cost-sharing terms of the Settlement. HMWW will be able to abandon a 90-year-old main and serve the Affected Property Owners

from a new main in the public right-of-way, which will ultimately benefit both the property owners and all HMWW customers. The existing main is made of cast iron, with lead joints that have a history of leaks. The new 12-inch main will be made of cement-lined ductile iron. Settlement ¶¶ III.10, 11, 14.

The Settlement will also resolve the OCA and the Formal Complainants' concern that the Affected Property Owners should not have to bear the full cost of relocating their service lines as a direct result of HMWW's distribution system improvement project. OCA Answer at 2-3. It also responds to the concern stated in some of the Formal Complaints that requiring customers to pay thousands of dollars that they had no knowledge of and, thus, no ability to plan for prior to 2020, would be an unreasonable financial burden, particularly at a time where some of the impacted customers are unemployed and dealing with the hardships of the Covid-19 pandemic. *See, e.g., Id.* at 3-4; Formal Complaint of Keller/Belt.

By reaching a compromise on the amount paid by the Formal Complainants, the Settlement also allows both the customers and the Company to avoid the additional time and expense that would be incurred should this matter be fully litigated. According to HMWW and OCA, the customer contribution in the Settlement reflects risks involved with litigation as well as the positions of the parties. This compromise will benefit the ratepayers of HMWW by avoiding legal fees that HMWW may seek to recover in future rates. HMWW also supports the cost sharing agreement because the Settlement provides certainty to HMWW. Additionally, the sharing of costs lies within the range of possible outcomes should the case be fully litigated.

The Settlement specifies the terms and conditions on which the Formal Complainants will pay for their portion of the costs of the new Customer Service Lines. Settlement ¶¶ 8-10. These provisions recognize HMWW's already-existing means for pursuing collections in the event of non-payment. The Settlement provides only 30 days for payment after the work is completed. Settlement ¶ 9. This period is reasonable because (1) the Formal Complainants have known since spring of 2020 that they might have to pay some amount towards the cost for installation of the Customer Service Lines, (2) the Formal Complainants will have additional time to prepare to make the payment while the Settlement is under review by the

Commission, and (3) the amount that they will pay is substantially reduced from the original estimate. Settlement ¶¶ III.5, 18 and IV.2.

### **Extension of the Settlement Terms to Other Affected Customers (Settlement ¶ IV.1)**

The customers affected by Beck Mill Road Water Line Replacement Project include the five formal Complainants and also five customers who did not file formal complaints. Three of the non-complaining customers have entered into separate agreements with HMWW regarding relocation of their Customer Service Lines (Settled Customers). Settlement ¶ III.21. There are two remaining customers, who are not Complainants and have not entered an agreement with HMWW (Other Affected Customers). Settlement ¶ III.22.

As a term of the Settlement, HMWW agrees that it will offer the same terms identified in this Settlement to the Other Affected Customers. The OCA supports giving additional, similarly situated customers the opportunity to receive the benefits of the Settlement terms and conditions for relocation of their Customer Service Lines. HMWW also supports this settlement term and agrees that it is in the public interest.

### **HMWW's Responsibilities for Completion of the Work and Warranty Provisions (Settlement ¶¶ IV. 3-7)**

The Settlement describes how the work will be completed. HMWW will complete the work of installing the service line and connecting it to the new main by either using its own workforce or by retaining a contractor. Settlement ¶ IV.3. This provides a benefit because it alleviates any burden from the Complainants and Other Affected Customers to retain a qualified contractor to complete the work. It also helps to ensure that the project meets the design and quality standards necessary to maintain the integrity of the water system. Further, it responds to a concern raised in Mr. McKercher's Formal Complaint that independent contractors might not want to perform this work due to liability issues relating to excavating near an active 12-inch main.

Additionally, HMWW will attempt to meet with each Formal Complainant prior to installation in order to confirm the location and orientation of the service line on the property. Settlement ¶ IV.4. This is an important term of the Settlement because, even though the work will be performed by HMWW, it provides the opportunity for the Complainants and Other Affected Customers to work with HMWW on the exact location and orientation of their Customer Service Line. This helps to provide some certainty about how the work will impact their properties (sidewalks, driveways, landscaping). For some customers, the relocation of the service line will mean that inside plumbing must be reconfigured, so the location of the service line will also impact the interior and exterior of the Formal Complainants' homes and the additional costs they will incur, which are not included in the Settlement. Settlement ¶¶ III.19, IV.11. Thus, the customers having input into the location and orientation of the Customer Service Lines is a key condition and benefit of the proposed Settlement.

Settlement Paragraph IV.5 provides HMWW's commitment that it will repair or replace any defect in workmanship and materials for a period of 12 months after the Customer Service Lines are put into service. In order to install the new service lines, the Formal Complainants authorize HMWW or its contractors to enter their properties to perform the work. Settlement at ¶ 6. The Settlement also includes a provision stating that HMWW will, as nearly as practicable, restore the properties, including sidewalks, driveways, landscaping, or sod, to its former condition after the work is completed. Settlement ¶IV.7.

The warranty provides certainty to the Formal Complainants that any issues with the installation or materials during the warranty period will be resolved by HMWW. The warranty provision also helps to assure the Formal Complainants that the work will be performed using quality materials and industry standard practices.

According to OCA, the restoration provision is important because it provides HMWW's commitment to restore the properties to their former condition. This is in the public interest because it protects the customers from incurring expenses for property restoration and helps to put them in the same position they would be in if the Borough had not required the service lines to be relocated.

## Cost Recovery (Settlement ¶¶ IV.11-12)

The Settlement also makes provision for HMWW to recover its portion of the costs of the service line replacements. Specifically, the Settlement provides that HMWW can record the costs as a regulatory asset and amortize them in the first base rate proceeding filed after approval of the Settlement. Settlement ¶ IV.11. The OCA submits that the cost recovery provisions are reasonable for several reasons.

OCA supports the cost recovery provisions and explains why these terms protect the interest of HMWW and its other ratepayers. First, it is reasonable for HMWW to have an opportunity to recover its expenses because, as discussed above, the abandonment of the 90-year-old main serving the Affected Property Owners will benefit all customers. At this time it is not known with certainty when the new Customer Service Lines will be installed. Also, HMWW has a base rate case pending and its last rate case was filed seven years ago. Given all of this, the expense associated with installing the Customer Service Lines might not be incurred within the historic test year for purposes of HMWW's next base rate case such that the expense could not be recovered in rates. Creating a regulatory asset for the expense provides an opportunity for recovery outside of the applicable test years.

Second, the Settlement provides appropriate limitations on recovery through the regulatory asset. The Settlement limits the regulatory asset to the costs associated with the Formal Complainants. Recovery is also limited to the costs incurred by HMWW or the Customer Owned Service Lines and excludes the costs of the Borough-owned portion of the service lines or the other costs of abandoning the existing main and installing and connecting customers to the new one. As a result, the costs at issue that would be booked to the regulatory asset are relatively small, estimated to be \$16,922.<sup>9</sup> To put this in perspective, the total projected cost of HMWW's 2020 Water System Improvements Project was \$1.25 million.<sup>10</sup> Settlement ¶ III.16. In addition, recovery through the regulatory asset is limited to HMWW's actual costs,

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<sup>9</sup> The total estimated cost for the Customer Service Lines is \$20,447, of which the Formal Complainants would pay \$3,545, such that HMWW would pay \$16,922.

<sup>10</sup> \$16,922 is 1.35% of the Borough's 2020 Water System Improvements Project.

with no interest or return. In this way, HMWW will recover its expenses but not more.<sup>11</sup> Finally, this Settlement provision requires HMWW to support the claimed operating expenses with invoices or records of payment in its next rate case, which the OCA reserves the right to review. This is another means by which recovery will be limited so that HMWW recovers only its actual expenses.

Importantly, the Settlement excludes HMWW's cost to install the Borough-owned portion of the service lines, between HMWW's main and the curb box from the regulatory asset. The costs related to installation of Borough-owned plant will be booked to rate base and begin depreciating when the line is placed into service. HMWW will thus have the same opportunity for recovery that it has for any other Borough-owned plant investment.

#### **Waiver of the Tariff (Settlement ¶ IV.13)**

The parties have agreed to disagree regarding the applicability of the HMWW's tariff provisions which state that the service line, "from the curb line to the customer's premises shall be installed and maintained at the expense of the customer"<sup>12</sup> to service line replacements necessitated by HMWW's infrastructure improvement project. However, in abundance of caution, OCA and HMWW agree that the Commission should approve a limited waiver of this tariff provision.

OCA contends that the waiver should be granted because the properties have been served by HMWW through service lines connected to the existing 12-inch main for more than 33 years. As a matter of fairness, existing customers who have paid to install and/or maintain service lines for decades should not bear the full cost for installing a new service line because of a project that the Borough has determined to undertake for the benefit of all customers. OCA further states that limited waiver is appropriate because the amounts at issue are relatively small,

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<sup>11</sup> Paragraph IV.11 of the Settlement provides that HMWW's costs related to the Customer Service Lines will not be included in rate base. This is appropriate because HMWW will not own the lines after the expiration of the warranty period. Settlement ¶ IV.13.

<sup>12</sup> Attachment 2 of the Settlement, Tariff Rule 4.3.

1.35% of the estimated cost for HMWW's 2020 Water System Improvements Project. Finally, according to OCA, this type of short-term limited waiver has been approved by the Commission in *Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket No. P-00072337 (Order entered May 19, 2008) (*2008 Order*). HMWW also supports Commission approval of the tariff waiver because the approval will also sufficiently resolve HMWW's Petition for Declaratory Order and save HMWW and its ratepayers further litigation costs and eliminates the potential of an appeal which would further add to HMWW's legal expenses.

### **Recommendation**

I recommend that the Commission approve the Settlement without modification and grant a limited waiver of HMWW Tariff Rule 4.3. First, the Settlement balances the interests of the Complainants, HMWW and HMWW's other customers by providing a cost-sharing mechanism for the replacement of the customer-owned service lines and also providing a rate treatment for HMWW portion of the costs in a fair and balanced manner. The customer-paid component is modest, especially in comparison to the original estimate for the service line replacement. Second, the Settlement benefits the Other Affected Customers who did not file formal complaints by extending the cost sharing formula to them as well. This saves these customers the time and expense of negotiating their own separate agreements with HMWW or paying the full cost of the replacement of their service lines. Third, the Settlement requires the work to be done by HMWW rather than requiring each property owner to secure their own contractor. Line replacement under HMWW oversight is more likely to result in quality of work consistent with construction practices within HMWW's expertise.

I also recommend that the Commission grant the limited waiver of Tariff Rule 4.3 for the purpose of executing the service line replacements associated main line replacement. Such a waiver is consistent with Commission-approved tariff waivers of similar tariff rules of Columbia Gas in the 2008 Order and in other similar orders.

In 2007, Columbia undertook a distribution system improvement project which included upgrades to its distribution system. Columbia sought, and the Commission granted, limited tariff waivers of the tariff provisions related to its Western Customers to avoid requiring individual customers to bear the cost to replace their service lines. The rationale for the request was that the service line replacements were both required by and as a direct result of a main replacement and upgrade program that is beneficial to all of Columbia's customers in terms of system safety and reliability.<sup>13</sup> While the Commission was troubled that Columbia would not own or maintain the new service lines that would be replaced as part of the proposed project, the Commission conceded that reversion to customer ownership to the Western Customers was based on the language of Section 1510 of the Public Utility Code,<sup>14</sup> and specifically found that it was in the public interest for Columbia to replace certain customer-owned service lines at Columbia's expense when the lines must be replaced as a result of Columbia's main replacement and upgrade program. The Commission went on to grant Columbia's petition without modification:

The limited waivers granted herein are unopposed, appear to serve a useful and beneficial purpose designed to improve the quality of service. We find that limited waivers of Columbia's tariff rules relating to customer service line replacement are in the public interest.<sup>15]</sup>

The Commission approved a similar waiver request by Columbia in 2018, for many of the same reasons.<sup>16</sup>

Like the approval of the waiver of Columbia's tariff rules regarding customer owned service lines, granting a waiver of HMWW Tariff Rule 4.3 will serve the public interest. Granting the waiver will sufficiently resolve the dispute regarding the interpretation of Tariff

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<sup>13</sup> 2008 Order.

<sup>14</sup> 66 Pa.C.S. § 1510.

<sup>15</sup> 2008 Order at p. 6.

<sup>16</sup> *Petition of Columbia Gas of Pennsylvania for Limited Waiver of Certain Tariff Rules Related to the Replacement of Customer Service Lines and Field Assembled Risers*, Docket P-2018-2641560 (Order entered December 6, 2018).

Rule 4.3 and save the Complainants, OCA and HMWW and the Commission the time and expense of continuing to litigate not only the complaints resolved here, but also the Petition for Declaratory Order.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 501 *et seq.*

2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

3. The Joint Petition for Settlement is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Commission approve the Joint Petition for Settlement filed on February 17, 2022 without modification.

2. That the formal complaints of Tim S. McKercher, Docket C-2020-302180; Tracy L. Albrecht, Docket C-2020-3022354; Leonard and Sabrina Bosse, Docket C-2020-

